

# **Petition for Truing-Up upto FY 2016-17 and Aggregate Revenue Requirement and Tariff for FY 2018-19**



## **VOLUME - I**

**BSES**  
BSES Yamuna Power Limited

Empowering Delhi

BEFORE THE HON'BLE DELHI ELECTRICITY REGULATORY COMMISSION

VINNIYAMAK BHAWAN, C BLOCK, SHIVALIK, MALVIYA NAGAR,

NEW DELHI-110017

Petition \_\_\_\_\_ of 2017

**IN THE MATTER OF:-**

**BSES Yamuna Power Limited ("BYPL")**

Shakti Kiran Building, Karkardooma

New Delhi-110 032

..... **PETITIONER**

**AND**

**IN THE MATTER OF:-**

Truing up of expenses upto the Financial Year (hereinafter referred to as "FY") FY 2016-17, in terms of Regulation 13 read together with Regulation 139 of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017(hereinafter referred to as "**DERC Tariff Regulations, 2017**"), provisions under the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011 (hereinafter referred to as "**DERC MYT Regulations, 2011**") and Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2007 (hereinafter referred to as "**DERC MYT Regulations, 2007**") read with Section 62 of the Electricity Act, 2003 and read with Sections 11 and 28 of Delhi Electricity Reforms Act 2000 to the extent applicable, the Delhi Electricity Regulatory Commission (Conduct of Business) Regulation 2001 and Condition 24 of the License for Distribution and Retail Supply of Electricity issued by the Hon'ble Delhi Electricity Regulatory Commission (hereinafter referred to as "**the Hon'ble Commission**").

**AND**

**IN THE MATTER OF:-**

Annual Tariff Petition for FY 2018-19 under Section 62 of the Electricity Act, 2003 read with Regulation 11 & 12 and other relevant provisions under Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017(hereinafter referred to as "**Tariff**

**Regulations, 2017")** and the Delhi Electricity Regulatory Commission Business Plan Regulations, 2017(hereinafter referred to as "**Business Plan Regulations, 2017")** and also under Sections 11 and 28 of Delhi Electricity Reforms Act 2000 to the extent applicable, the Delhi Electricity Regulatory Commission (Conduct of Business) Regulation 2001 and Condition 24 of the License for Distribution and Retail Supply of Electricity issued by the Hon'ble Commission.

## **PETITION FOR TRUING UP OF EXPENSES UPTO FY 2016-17 AND ANNUAL TARIFF**

### **PETITION FOR FY 2018-19**

#### **RESPECTFULLY SHEWETH:**

1. BSES Yamuna Power Limited (hereinafter referred to as "**the Petitioner**"), a company incorporated under the Companies Act, 1956, and having its registered office at Shakti Kiran Building, Karkardooma, New Delhi – 110032, is a license holder for carrying on the business of Distribution and Retail Supply of electrical energy within the Area of Supply as specified in the "*License for Distribution and Retail Supply of Electricity*" issued by the Hon'ble Commission.
2. The present petition is being filed for:
  - a) Truing up of Expenses upto FY 2016-17; and
  - b) Annual Tariff for FY 2018-19

The present Petition contains the following chapters:

- a) Chapter I - Performance during FY 2016-17
- b) Chapter II - Compliance to Directives
- c) Chapter III - Truing Up upto FY 2016-17
- d) Chapter IV - Annual Revenue Requirement for FY 2018-19
- e) Chapter V - Tariff Proposal for FY 2018-19

The above chapters are essentially a part and parcel of this Petition.

(Hereinafter collectively referred to as the "**ARR Petition**")

3. In accordance with the Electricity Act, 2003 (hereinafter referred to as "**2003 Act**"), the License conditions, Business Plan Regulations, 2017, and Tariff Regulations, 2017 & MYT

Regulations, 2011 the Petitioner is required to file Petition for ARR & Tariff for FY 2018-19 and Truing up of Expenses up to FY 2016-17. The Petitioner further submits that vide the present filing it prays the Hon'ble Commission to allow the present petition and *inter alia* to permit the true up as sought for.

4. The Hon'ble Commission notified the Tariff Regulations, 2017 which has come into force from 01.02.2017. The Tariff Regulations requires filing of Annual Tariff Petition and True-up Petition by the distribution licenses.
5. On 31.08.2017, the Hon'ble Commission notified the Business Plan Regulations to be part of the Tariff Regulations, 2017. These Regulations shall remain in force for a period of 3 (three) years i.e., for FY 2017-18, FY 2018-19 and FY 2019-20.
6. The Petitioner is filing the present ARR Petition to ensure prompt determination of truing-up of expenses upto FY 2016-17 and ARR and Tariff for FY 2018-19 and requests the Hon'ble Commission to permit recovery of expenses as prayed for as well as to:
  - (a) Enable the Petitioner to comply with various directions of the Hon'ble Commission;
  - (b) Enable the Petitioner to meet performance standards and mitigate the impact of the large increase in power purchase costs and other uncontrollable costs.
  - (c) Set a realistic, achievable and practical trajectory for various heads based on the actual performance of the Petitioner during last control period.

This becomes imperative as:

- (d) There is a significant variation in Power Purchase Rate during FY 2016-17 like previous years primarily on account of various factors, which are beyond the control of the Petitioner. Thus, it would be incumbent on this Hon'ble Commission to address this problem since only a part of power purchase cost has been permitted through tariff that too without passing on the variation of short term purchase and sales in the power purchase price adjustment formula.
- (e) The Petitioner is faced with an imminent cash-flow crunch due to unrecovered expenses primarily on account of uncontrollable increase in the power purchase cost.
- (f) The Petitioner is aggrieved with the fact that a cost-reflective tariff has not been provided to the Petitioner ever since 2007. The Hon'ble Commission in its Statutory Advice to the Government of National Capital Territory of Delhi ("GoNCTD") dated February 1, 2013 has admitted that the Petitioner is facing

an adverse financial position. Even independent experts appointed by GoNCTD, such as M/s. Pricewaterhouse Coopers have corroborated the said findings of the Hon'ble Commission on various occasions.

- (g) The Petitioner has been and is in a situation where its financial health and ability to pay for power procurement besides statutory dues has been constrained not for any reasons attributable to the Petitioner but for the legitimate costs and expenses being withheld in the form of Regulatory Assets and for not granting the allowance which are even directed by the Hon'ble ATE.

It is submitted that ARR and Tariff has been allowed by the Hon'ble Commission without a proper true-up of accounts for the previous years and even though there may have been surpluses as determined by the Hon'ble Commission in the true-up of previous years the same has not been accounted for in deciding and approving the ARR in the subsequent years.

It is respectfully submitted that the Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as **"the Hon'ble ATE"**) has in a catena of judgments underscored the necessity for carrying true-up of expenses for the financial viability of the licensees and utilities. The Hon'ble Tribunal has also emphasized on the requirement to carry out the exercise for true-up in a time bound manner and ensure speedy recovery of costs. Hence, allowing true-up on urgent basis is pivotal for the Petitioner to meet its power purchase costs and other uncontrollable costs, meet the performance standards as well as comply with various directives specified by the Hon'ble Commission, which particularly entails expenditure. Timely completion of the true-up exercise allowing recovery of costs in a reasonable manner will have a positive impact on the ability to service the consumers/public. Hence, by way of the present petition the Petitioner seeks to set out the financial data on the basis of the actual audited numbers for consideration by the Hon'ble Commission in the present ARR Petition.

7. While preparing the present ARR Petition, the following aspects have been borne in mind and taken in as the guiding factors:
- a) That the applicability of MYT Regulations, 2011 was extended by the Hon'ble Commission only for a period of 1 year, i.e., upto March 31, 2016 and no further Order or direction has been issued by the Hon'ble Commission for indicating any extension of the aforesaid 2011 Regulations for a period beyond March 31, 2016. The MYT Regulations, 2017 have come into force only from 01.02.2017. For the

period beyond March 31, 2016, till 1<sup>st</sup> February 2017, there were no Regulations notified by the Hon'ble Commission which would apply to the exercise of true-up of expenses. It is well settled that Regulations framed under the EA 2003 could not apply retrospectively. Further, it is also well settled law laid down by the Hon'ble Tribunal that the absence of Regulations does not take away the power of the Commission under section 62 to determine the tariffs (which includes the exercise of truing up of expenses). In such a situation, the Commission might as well seek an overall guidance from the 2011 Regulations and exercise its powers under section 62 of the 2003 Act for exercising the power of true-up, whilst keeping in mind that no tariff had been determined for FY 2016-17 and no financial or performance targets had been set for FY 2016-17 prior to the commencement of the year. Hence, there was no opportunity to the Petitioner to either plan its expenses at the beginning of the year or for that matter control its expenses as the year progressed. Keeping in view the law laid down by the Hon'ble Tribunal for carrying out of true-up of expenses by the Commissions, the Petitioner in the present ARR Petition prays that the Hon'ble Commission undertakes truing-up of the expenses for the period FY 2016-17 based on the audited accounts.

#### **EFFECT OF STATUTORY DOCUMENTS**

- b) This ARR Petition is filed in accordance with the principles contained in the;
- i. Electricity Act, 2003;
  - ii. MYT Regulations, 2011 and Tariff Regulation 2017 (wherever applicable);
  - iii. Business Plan Regulations, 2017;
  - iv. Tariff Policy and National Electricity Policy;
  - v. Principles of law laid down by the Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as "**Hon'ble ATE**") pertaining to true-up of uncontrollable factors such as power purchase costs, energy sales, new initiatives and other uncontrollable costs; and
  - vi. Principles of law laid down by the Hon'ble ATE pertaining to recovery of accumulated Revenue Gaps and allow suitable Tariff revision to recover estimated revenue shortfall;
  - vii. Principles of law laid down by the Hon'ble ATE pertaining to the fixing of financial and performance targets before the Tariff Year;
  - viii. Principles of law laid down by the Hon'ble ATE that Regulations framed under the Act could not operate retrospectively;

- ix. Principles of law laid down by the Hon'ble ATE pertaining to approval of all expenses in the truing up while determining Aggregate Revenue Requirement without deferring any or part of the expense in the form of Regulatory Asset.
- x. Consider the energy requirement appropriately based on the exercise initiated by the Hon'ble Commission regarding reallocation of capacity.
- xi. Tariff Orders issued by CERC for various generating stations and Tariff Orders issued by this Hon'ble Commission for the Generating and Transmission companies from which the Petitioner draws power, while determining the power purchase and transmission costs of the Petitioner.
- xii. Business Plan/Business Plan information filed by the Petitioner.

**EFFECT OF JUDGMENTS PASSED BY HON'BLE ATE:**

- c) This Hon'ble Commission, would also be required to decide and determine the ARR Petition in accordance with the principles contained in the;
  - i. Hon'ble ATE's Judgment dated November 11, 2011 passed in O.P. No. 1 of 2011;
  - ii. Hon'ble ATE's Judgment dated October 6&30, 2009, July 12, 2011, November 28, 2014, March 2, 2015, May 15, 2015 and May 15, 2017 in Appeal No. 36&37 of 2008, Appeal No. 147 of 2009, Appeal No. 62 of 2012, Appeal No. 178 of 2012, RP No. 13 of 2015 and Appeal No. 104 of 2017 respectively in the matter of BSES Yamuna Power Limited vs. Delhi Electricity Regulatory Commission & Others.; and
  - iii. Hon'ble ATE's judgment dated July 30, 2010, May 31, 2011 and November 28, 2013 in Appeal No. 153 of 2009, Appeal No. 52 of 2008 and Appeal No. 14 of 2012 respectively in the matter of North Delhi Power Limited vs. Delhi Electricity Regulatory Commission & Others., in accordance with the principle of maintaining equity and parity amongst all the Discoms;
- d) The Petitioner most respectfully states and submits that the Hon'ble ATE vide its judgment dated November 11, 2011 in the matter of O.P. No. 1 of 2011, reported as 2011 ELR (APTEL) 1742 has held that the power purchase cost is a major expenditure in the ARR of the distribution licensee. The fuel and power purchase cost is also uncontrollable and it has to be allowed as quickly as possible according to the National Tariff Policy.
- e) The Hon'ble ATE by its judgments dated March 2, 2015 (Appeal 178 of 2012) and November 28, 2014 (Appeal 62 of 2012) reiterated its serious concern about the



non-implementation of the judgments on the part of this Hon'ble Commission dated October 6&30, 2009 (Appeal 36&37 of 2008) and July 12, 2011 (Appeal 147 of 2009) respectively.

8. In view of the above, it is respectfully submitted that the following judgments/ principles laid down by the Hon'ble ATE in its various judgments may kindly be implemented while deciding the present petition. Amongst others, this Hon'ble Commission may kindly ensure the speedy implementation of the following judgments. It is most respectfully submitted that the clarificatory application filed by this Hon'ble Commission numbered as IA No. 321 of 2015 came to be dismissed by the Hon'ble ATE vide order dated 31.10.2017. Hence, the reason hitherto being indicated in the tariff Orders for non-implementation of the ATE's judgments, would, in any event, no longer hold good. It needs to be reiterated that inaction or non-implementation of the judgments of the Hon'ble ATE would be adverse to the interests of the consumers, as it will only burden them with the carrying costs on account of time lag in implementing the said judgments and consequently would be contrary to the Electricity Act, 2003 as one of its corner stones is to "[protect] the interests of consumers" as enshrined in the preamble and policy and purpose.

- a) Judgment dated October 30, 2009 in Appeal No. 37 of 2008 (read with judgment dated October 6, 2009 in Appeal No. 36 of 2008) in the matter of BSES Yamuna Power Limited Vs. Delhi Electricity Regulatory Commission laying down the principles of law in the following issues:

S. No	Issues	Directions of the Hon'ble ATE
1.	Sales Projections and Power Purchase	The Commission shall true up the figures of power purchased for the year FY 2007-08 and would correct the methodology of projection for the future years as per our direction.
2.	Distribution Loss and AT&C Losses	The Commission may itself consider the plea of any amendment in the target set in this regard in case the appellant makes out a case. Therefore, we direct that the appellant may make an appropriate representation to the Commission in this regard within one month hereof and that if a representation is so made the Commission shall dispose it of in two months. The Hon'ble ATE has in its judgment dated 28th November 2014 in Appeal No.61 and 62 of 2012 has specifically directed this Hon'ble Commission to reconsider the matter within three months from the date



S. No	Issues	Directions of the Hon'ble ATE
		of issuance of the said judgment dated 28th November 2014 and pass a reasoned order.
3.	Capital Expenditure and Capitalisation	
a)	<i>REL Purchases disallowance</i>	The TPDDL submitted its records before the Commission simultaneously with the Appellant during the tariff hearing of the relevant year. As such the records are expected to be with the Commission. In case the price paid to REL is same as or lower than the price allowed to TPDDL for a comparable commodity, the Commission shall allow the price paid to REL. The Commission shall, however, allow a lesser price if the TPDDL's price is lower than the price of REL's purchase plus 5% profit margin.
b)	<i>EIC Disallowance</i>	For capitalisation of fresh assets the DISCOM shall make appropriate applications to the Electrical Inspector and the capitalisation of such assets will be allowed w.e.f. 16th day of filing of the application and payment of necessary fee.
4.	Employee Expenses	
a)	<i>SVRS Pension</i>	The Commission shall allow the expenses incurred towards retirement of SVRS optees pending decision of the Actuarial Arbitration Tribunal and shall true up the employees expenses to the extent of increased cost by increase in consumer base.
b)	<i>Sixth Pay Commission</i>	So far as salary hike is concerned to the extent of hike comparable to the Sixth Pay Commission's recommendations for employees other than the erstwhile DVB employees shall also be allowed in true up process in case expenditure in that account has already been incurred.
c)	<i>Increase in employee expenses to number of consumers</i>	Having gone through the impugned order we do find that the Commission has not considered the issue of possible increase in the number of employees consequent on increase in the consumer base. Nor has the Commission ruled on the appellant's proposal to increase the salaries etc. The Commission has nonetheless assured to true up the employees expenses subject to prudence check. The Commission shall also take care of the related carrying cost. This should satisfy the appellant.
5.	Disallowance of R&M and A&G Expenses	The R&M expenses appropriately incurred should be approved and in case there is any gap between demand made by the appellant and the amount sanctioned by the Commission, the Commission should enter into the

S. No	Issues	Directions of the Hon'ble ATE
		exercise of prudence check and grant approval of such expenses.

- b) Judgment dated July 30, 2010 passed in Appeal No. 153 of 2009 in the matter of North Delhi Power Limited Vs. Delhi Electricity Regulatory Commission directing as follows:

S. No	Issues	Directions of the Hon'ble ATE
1.	Financing Cost of LPSC	The State Commission is directed to rectify its computation of the financing cost relating to the late payment surcharge for the FY 2007-08 at the prevalent market lending rate during that period keeping in view the prevailing Prime Lending Rate.
2.	Carrying cost-rate in ratio of 70:30	The State Commission is hereby directed to reconsider the rate of carrying cost at the prevailing market rate and the carrying cost also to be allowed in the debt/ equity of 70:30.

- c) Judgment dated July 12, 2011 passed in Appeal No. 147 of 2009 in the matter of BSES Yamuna Power Limited Vs. Delhi Electricity Regulatory Commission directing as follows:

S. No	Issues	Directions of the Hon'ble ATE
1.	Late Payment Surcharge-funding	Appellant is entitled to the compensation for additional financing cost of outstanding dues limited to late payment surcharge amount at the prevalent market lending rate during that period keeping in view the prevailing Prime Lending Rate.
2.	Carrying cost-rate	State Commission is directed to reconsider the rate of carrying cost at the prevalent market rate keeping in view the prevailing Prime Lending Rate.
3.	True-up of first 11 months as per policy direction period	The State Commission is directed to true up the financials for the period 1.4.2007 to 28.2.2008 at the earliest and allow the same with carrying cost.

- d) Judgment dated November 11, 2011 passed in O.P. No. 1 of 2011 reported as 2011ELR (APTEL)1742 laying down principles of law in the following issues:

S. No	Issues	Directions of the Hon'ble ATE
1.	Recovery of Regulatory Assets	The recovery of the Regulatory Asset should be time bound and within a period not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.
2.	Correction of PPAC Formulae	Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter.

e) Hon'ble ATE Judgment dated November 11, 2011 passed in O.P. No. 1 of 2011 (Suo-motu action on the letter received from Ministry of Power) holding inter alia as follows:

- (i) *Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations*
- (ii) *It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1st April of the tariff year. For example, the ARR & tariff for the financial year 2011-12 should be decided before 1st April, 2011. The State Commission could consider making the tariff applicable only till the end of the financial year so that the licensees remain vigilant to follow the time schedule for filing of the application for determination of ARR/tariff.*
- (iii) *In the event of delay in filing of the ARR, truing-up and Annual Performance Review, one month beyond the scheduled date of submission of the petition, the State Commission must initiate suo-moto proceedings for tariff determination in accordance with Section 64 of the Act read with clause 8.1 (7) of the Tariff Policy.*
- (iv) *In determination of ARR/tariff, the revenue gaps ought not to be left and Regulatory Asset should not be created as a matter of course except where it is justifiable, in accordance with the Tariff Policy and the Regulations. The recovery of the Regulatory Asset should be time bound and within a period*

*not exceeding three years at the most and preferably within Control Period. Carrying cost of the Regulatory Asset should be allowed to the utilities in the ARR of the year in which the Regulatory Assets are created to avoid problem of cash flow to the distribution licensee.*

- (v) *Truing up should be carried out regularly and preferably every year. For example, truing up for the financial year 2009-10 should be carried out along with the ARR and tariff determination for the financial year 2011-12.*
- (vi) *Fuel and Power Purchase cost is a major expense of the distribution Company which is uncontrollable. Every State Commission must have in place a mechanism for Fuel and Power Purchase cost in terms of Section 62 (4) of the Act. The Fuel and Power Purchase cost adjustment should preferably be on monthly basis on the lines of the Central Commission's Regulations for the generating companies but in no case exceeding a quarter. Any State Commission which does not already have such formula/mechanism in place must within 6 months of the date of this order must put in place such formula/ mechanism.*

- f) Judgment dated November 28, 2014 passed in Appeal No. 62 of 2012 in the matter of BSES Yamuna Power Limited Vs. Delhi Electricity Regulatory Commission holding inter alia as follows:

S. No	Issues	Directions of the Hon'ble ATE
1.	Interest on Working Capital and Regulatory Assets	Direct the Commission to implement our directions (judgment reported as 2010 ELR (APTEL) 0891 in Appeal No. 153 of 2009) in letter and spirit.
2.	Relief claimed by the Appellant in Power purchase	The Appellants has submitted that the Commission has implemented the directions of the Tribunal and accordingly the Appellants have not pressed this point.
3.	Terminal benefits payments to VRS optee employees	Delhi Commission is directed to allow the payments made by the Appellant to VRS optee employees on ad hoc basis and adjust the same after the decision of the Actuarial Tribunal.
4.	R&M and A&G expenses for FY 2004-05 and 2005-06	The Commission is directed to implement the direction (in judgment reported as 2009 ELR (APTEL) 0880 in Appeal No. 36 of 2008) of this Tribunal in true letter and spirit and do not involve in inventing any new methodology to circumvent to such directions. The issue is decided in favour of the Appellants.
5.	Truing up the financial for the	In the light of categorical submission that required true up would be made, the Commission is directed to carry

S. No	Issues	Directions of the Hon'ble ATE
	period 1.4.2007 to 28.2.2008	out the same in its next tariff exercise and allow the differential amount, if any, along with carrying costs.
6.	Review of distribution loss for the first control period	The Commission is directed to reconsider the matter with in three months from date of issuance of the judgment and pass a reasoned order.
7.	Payments made to DTL	The Appellant has not pressed this issue as the Delhi Commission has rectified the same in subsequent Order dated 13.07.2012.
8.	Truing up of interest rates of loans	The Delhi Commission is directed to revise the rate of interest on loan as well true up of the RoCE in its next tariff exercise. The issue is accordingly decided in favor of the Appellants.
9.	Reduction of AT&C losses by 10% in Zones having losses more than 30%.	We are of the view that so far the Appellants meet the overall AT&C loss targets set by the Commission, the Commission should not indulge in micro-management of the licensee's day to day operation. The impugned direction relating to imposition of penalty on failure to reduce losses by 10% in high loss areas is set aside. The issue is decided in favour of the Appellant.
10.	Change in methodology in computation of AT&C losses	All the parameters such as LPSC, ED, DVB arrears have to be included both in the numerator as well in the denominator for computing the collection efficiency.
11.	Fixation of AT&C loss reduction targets	In the light of above discussions we direct the Delhi Commission to re-determine the AT&C loss levels for the FY 2011-12 as per its letter dated 8.3.2011 and give consequential relief to the Appellants. The issue is decided in favour of the Appellants.
12.	Disallowance of claim of overachievement in AT&C losses	In view of categorical assertions made by the Appellants that full details related to AT&C losses to the Commission, we direct the Commission to reconsider the matter taking in to account the information submitted by the Appellants. The Appellants are also directed to make all the additional information, if any, required by the Commission. The matter is disposed of accordingly.
13.	Disallowance due to wrong verification of sales in kWh figures for FY 2009-10	We direct the Commission to recompute the AT&C losses for FY 2009-10 using actual kWh figures as recorded in para 4.8 of the Impugned order. The issue is decided in favour of the Appellants.

S. No	Issues	Directions of the Hon'ble ATE
14.	High rate of sale of surplus power	The Commission should, instead of fixing tariff at high rate of Rs 4.00 per unit, have fixed the rate based on weighted average rate for actual sale by the Appellants. The Appellants should also in their petition in future give an estimate of the sale price on the estimated surplus based on the date for the previous year to facilitate proper estimation. The Commission is directed that in future the rate for sale of surplus power shall be fixed as suggested above. The issue is decided in favor of the Appellants.
15.	Disallowance of carrying cost on Reactive Energy	This Tribunal in a number of judgments have held that carrying cost is a legitimate right of the licensee and its recovery is legitimate expense. Once the Commission has allowed certain expenses in the truing up or on the directions of higher authority, the carrying costs for such expense would also become recoverable. The Commission is, therefore, directed to allow the carrying cost on Reactive Energy Charges for FY 2006-07. The issue is decided in favour of the Appellants.
16.	Wrong computation of WACC	We find force in the contentions of the Appellant and direct the Commission to re-evaluate the WACC considering the repayment of loans during the period and recompute RoCE payable to the Appellant. The issue is decided in favour of the Appellant.
17.	PLF for State Owned Gas Based Generating stations	While projecting the energy available from any station its past performance is most important pointer and the Commission should have taken in to account the same. Since the tariff period is already over, we are not inclined to interfere with the order on this count. But we direct the Commission to consider the past performance of these generating stations while estimating the availability of energy. The issue is decided in favor of the Appellant.
18.	Arbitrary determination of Efficiency Factor	The ratio of this Tribunal's judgment in Appeal No. 14 of 2012 applies squarely into the facts of the present case. The issue is decided in favour of the Appellants.
19.	Typo errors and wrong summations	The Commission in its reply of 2012 has acknowledged the error and submits that the same shall be reworked in the next Tariff Order. Accordingly, the issue is decided in favour of the Appellant.

S. No	Issues	Directions of the Hon'ble ATE
20.	Non-consideration of Power Purchase price adjustment	In view of the submissions made by the Commission that it will implement the judgment of this Tribunal in OP1 of 2011 the issue does not survive. The Commission is, however, directed to implement the directions of this Tribunal in letter and spirit.
21.	Efficiency factor applied on arrears of employees expense pertaining to FY 2005 – 06 and FY 2006-07	During the hearing the learned Counsel for the Respondent Delhi Commission has conceded that a mistake has been committed by the Delhi Commission with reference to the present issue in its entirety and been rectified in the next tariff. The issue, therefore, does not survive.
22.	Application of efficiency factor on pension payments	Delhi Commission submits that the Delhi Commission will review the efficiency factor to SVRS payment at the end of control period as the amount allowed is provisional. In view of the statement of the learned Counsel for the Delhi Commission, the Delhi Commission is directed to do the same at the end of the control period. Accordingly decided.

- g) Judgment dated March 2, 2015 passed in Appeal No. 178 of 2012 in the matter of BSES Yamuna Power Limited Vs. Delhi Electricity Regulatory Commission laying down principle of law in the following issues:

S. No	Issues	Summary of Findings
1.	Interest on Working Capital	As directed in the judgment in appeal no. 153 of 2009, the financing cost for Late Payment amount has to be allowed at the prevalent market lending rates as per the Tariff Regulations. According, the State Commission is directed to redetermine the interest rate and the amount of financing cost.
2.	Carrying cost on Regulatory Assets/Revenue Gap	We direct the State Commission to recompute the carrying cost considering 70% to be allowed as debt at 11.66% and the balance 30% to be allowed at the prevailing ROE rate for the relevant year for which the carrying cost is being computed.
3.	Rebate claimed by the Appellant on power purchase	Issue is decided in terms of the findings of this Tribunal in Appeal no. 153 of 2009 and Appeal no. 14 of 2012 in favour of the Appellant.
4.	Disallowance due to related party	The State Commission will make available the data to the Appellants within a month of the application. The



S. No	Issues	Summary of Findings
	purchases	Appellant after analysis will file its claim before the State Commission and the Commission will consider the same as per the directions of the Tribunal in Appeal no. 36 of 2008 decided on 06.01.2009 and decide the matter within 60 days of submissions made by the Appellants. Accordingly directed.
5.	Allowance of CAPEX	We, therefore, direct the State Commission to also carry out the physical verification of the assets capitalized during FY 2004-05 and 2005-06 through its appointed agency and expedite implementation of the decision of this Tribunal in Appeal no. 36 of 2008 decided on 06.01.2009. The whole issue shall be decided within 6 months of the date of this judgment.
6.	Repair and Maintenance (R&M) and Administrative and General (A&G) expenses	The State Commission is directed to give effect to the directions of this Tribunal in Appeal no. 61 and 62 of 2012 in the next tariff order.
7.	Claims for truing up for the period 01.04.2007 to 28.02.2008	This issue has also been dealt with by this Tribunal in its judgment dated 28.11.2014 in Appeal nos. 61 and 62 of 2012, this Tribunal directed the State Commission to carry out the same in its next tariff exercise and allow the differential amount, if any, along with carrying cost.
8.	Review of distribution loss for 2008-2011	The same issue has been dealt with by the Tribunal in its judgment dated 28.11.2014 in Appeal no. 61 and 62 of 2012, wherein the State Commission was directed to reconsider the matter within 3 months from date of issuance of the judgment and pass a reasoned order. This issue is decided accordingly.
9.	Truing up of interest rates of loans	This issue is decided in favour of the Appellant in view of this Tribunal's judgment in Appeal no. 61 & 62 of 2012.
10.	PLF assumed for IPGCL (GT) Station	This issue is decided in favour of the Appellant in view of this Tribunal's judgment in Appeal no. 142 & 147 of 2009.
11.	Reduction of AT&C losses by 10% in zones having losses above	The impugned finding for imposition of penalty for non-achievement of loss reduction of 10% in high loss area is set aside. This issue is decided in favour of the

S. No	Issues	Summary of Findings
	40%	Appellant.
12.	Disallowance of capital expenditure	The State Commission would true-up the capital expenditure incurred on the approved schemes. However, in future, we would like to Commission to approve the schemes based on the business plan for the control period and justification of the schemes as submitted by the Appellants well in advance and before the commencement of the ensuing financial year.
13.	Wrongful reduction of collection efficiency achieved	This issue is decided in view of this Tribunal's judgment in Appeal no. 61 & 62 of 2012.
14.	Erroneous reduction of additional UI charges	We direct the State Commission to reconsider the amount disallowed on account of UI charges to restrict it to the amount for overdrawals below the frequency at which penal charges for UI are leviable.
15.	High rate assumed for sale of surplus power for the Control Period	This Tribunal in Appeal no. 171 of 2012 in the matter of Tata Power Delhi Distribution Ltd. Vs., DERC wherein same issue was raised, has also given guidelines for estimation of sale price more realistically. However, for the past period, the State Commission shall true up the sale price and allow the difference with carrying cost.
16.	Fixation of AT&C loss target for the MYT period	We feel that the State Commission should have refixed the collection efficiency target after benchmarking and considering the actual past performance after correcting for collection of DVB arrears, electricity duty and late payment surcharge which have been excluded in the definition in 2011 MYT Regulations. Accordingly, the State Commission is directed to reconsider the fixation of collection efficiency target.
17.	Lower allowance of employee costs	The State Commission should, therefore, redetermine the employees expenses taking into consideration the audited figures for 2010-11.
18.	Administrative and General (A&G) expenses	This issue has been dealt with in Appeal no. 171 of 2012 wherein we have set aside the methodology used in the impugned order and directed redetermination of A&G expenses. Accordingly, decided.
19.	Partial implementation of	We direct the Commission to true up the power purchase cost in the true up exercise. The Commission

S. No	Issues	Summary of Findings
	Power Purchase Adjustment Formula	shall, however, keep the above findings in view while deciding the PPCA formula for future.
20.	Wrongful computation of ROCE (WACC)	This issue has been dealt with by this Tribunal in Appeal no. 61 and 62 of 2012 wherein the Commission was directed to re-evaluate the WACC considering the repayment of loans during the period and recompute ROCE payable to the Appellants.
21.	Wrongful computation of 'K' factor.	The Commission should take into account the K factor for 2007-08 also and redetermine the K factor and the R&M expenses for the Control Period.
22.	Computation of non-tariff scheme.	The State Commission is directed to determine the interest rate and amount of financing cost after verifying the cost of debt taken by the Appellant and the market rate of debt.
23.	Approval of capital schemes and penalizing the Appellant for non-achievement of AT&C loss target	We remand the matter to consider the contentions of the Appellant regarding non-achievement of AT&C loss target for FY 2010-11 due to delay/non-approval of the schemes which was beyond its control after considering whether there was delay in according approval to the loss reduction schemes submitted by the Appellant in FY 2009-10 which resulted in the non-completion of these schemes during FY 2010-11.
24.	Arbitrary imputation of efficiency factor for determination of O&M expenses for true up of FY 2010-11	This issue is decided in favour of the Appellant in view of this Tribunal's judgment in Appeal no. 61 & 62 of 2012.

- h) Judgment dated May 15, 2015 (RP No. 13 of 2015) in the matter of BSES Yamuna Power Limited Vs. Delhi Electricity Regulatory Commission laying down principle of law in the following issues:

S. No	Issues	Directions of the Hon'ble ATE
1.	Comparable pay (vis-à-vis 6 <sup>th</sup> pay) for Non-FRRS Employees	In view of above we allow the Review Petition. Delhi Commission will consider the issue as per the judgment of this Tribunal in 2009 ELR (APTEL) 880.

S. No	Issues	Directions of the Hon'ble ATE
2.	Capital Expenditure	Accordingly, the Appellants are given liberty to press this issue in the Appeals 265 and 266 of 2013."

- i) Judgment dated October 31, 2017 (I.A. No. 321 of 2015 in Appeal No. 178 of 2012 by the Hon'ble Commission seeking clarification) in the matter of BSES Yamuna Power Limited Vs. Delhi Electricity Regulatory Commission laying down principle of law in the following issues:

S. No	Issues	Directions of the Hon'ble ATE
1.	Change in methodology of computation of AT&C Losses	<ul style="list-style-type: none"> <li>Out of 10 issues, first 6 issues form part of Appeal 61 &amp; 62 of 2012 and therefore cannot be reviewed/ clarified in Appeal 177 &amp; 178 of 2012.</li> <li>The issue of food and children allowance pertains to TPDDL and also forms part of the execution petition. The same will be dealt separately in the execution petition.</li> <li>The issue of FRSR and non-FRSR employees have already been reviewed in Appeal 61 &amp; 62 of 2012 vide APTEL judgment dated 15.05.2015. A review of a review order is not permissible under the law.</li> <li>Application dismissed.</li> </ul>
2.	Fixation of AT&C Loss target of FY 2011-12	
3.	SVRS Terminal benefit payment	
4.	Disallowance due to wrong valuation of sales in Kwh figures for FY 2009-10	
5.	Arbitrary computation of Efficiency factor	
6.	Repayment of loan while calculation of WACC	
7.	Efficiency factor for MYT Control Period FY 2012-13 to FY 2014-15 and FY 2011-12.	
8.	Food and Children Education Allowance	
9.	Review of FRSR and Non-FRSR Employees costs for MYT Control Period	
10.	Truing-up of interest rates of loans	

- j) Judgment dated May 15, 2017 read together with February 23, 2015 in Appeal 104 of 2017 and Appeal No. 111 of 2014 respectively in the matter of BSES

Yamuna Power Limited vs. Delhi Electricity Regulatory Commission laying down principle of law in the following issues:

S. No	Issues	Directions of the Hon'ble ATE
1.	Refund of unspent consumer contribution received by the DISCOMS for capital work under the deposit schemes.	<p><b><u>Judgment dated February 23, 2015 in Appeal No. 110 of 2014:</u></b></p> <p><i>These matters are remanded to the learned Delhi Electricity Regulatory Commission giving liberty to the appellant's / DISCOMs to furnish the accounts showing that the excess amount of consumers contribution has been duly considered in the ARRs from FY 2002-03 onwards in reducing the retail supply tariffs. In that situation the Commission is further directed to hear the matter and pass the consequential order as it thinks fit and proper in the facts and circumstances of these matters.</i></p> <p><b><u>Judgment dated May 15, 2017 in Appeal No. 103 of 2017:</u></b></p> <p><i>In view of our above conclusion, the Appeals are allowed and the impugned Order letter dated 12.01.2017 is set aside. The Appeal Nos. 103 of 2017, 104 of 2017 and IA Nos. 303 of 2017, 304 of 2017 are disposed of with no cost. We direct DERC to follow instructions given in this Tribunal's Judgment dated 23.02.2015.</i></p> <p>(Note: Hon'ble Commission's Civil Appeal against the said Judgment dated 15-5-2017 has been dismissed by the Hon'ble Supreme Court.)</p>

9. It is respectfully submitted in law that it would be mandatory that the said judgments delivered by the Hon'ble ATE and implemented in their true letter and spirit by the Hon'ble Commission and the financial impact and regulatory effect of the principles laid down in these judgments and/ or entitlements under these judgments be granted to the Petitioner while deciding the present Petition. Implementation of these judgments becomes imperative as Hon'ble ATE had directed the Hon'ble Commission to reconsider certain claims, which were disallowed by the Hon'ble Commission and allowing such claims has direct impact on the cash flow of the Petitioner.

**CLAIMS AND FINANCIAL IMPACT:**

The list of these claims and the impact along with carrying cost upto FY 2015-16 is as follows:

**Table 1: Total impact claimed on account of implementation of Hon'ble ATE Judgments***(Amount in Rs. Crore)*

S. No	Particulars	Principal	Carrying cost	Total
1	Capex related issues	1,220	1,711	2,931
2	Impact of 11 months truing-up	160	233	393
3	Revision in distribution loss-FY 08 to FY 11	70	131	201
4	Effect of 6th pay commission for non-DVB Employees	63	104	167
5	AT&C Loss for FY 2011-12	95	84	179
6	Non-revision of AT&C Loss from FY 2012-13 to FY 2015-16	464	157	622
7	Increase in employee expenses corresponding to increase in consumer base	59	88	147
8	Payment to VRS Optees	45	101	146
9	R&M and A&G Expenses-FY 05 to FY 07	28	87	114
10	Lower rates of carrying cost		742	742
11	Efficiency factor for FY 2011-12	11	10	21
12	Efficiency factor from FY 13 to FY 16	49	14	63
13	Efficiency factor for FY 2010-11	11	12	23
14	Computation of AT&C Loss for FY 2009-10	21	30	51
15	Financing cost of LPSC based on SBI PLR	22	29	51
16	DVB Arrears while computing AT&C Loss for FY 09	4	7	11
17	Incorrect revision of R&M Expenses by revising "K" factor	20	13	33
18	Additional UI Charges above 49.5 Hz	2	1	3
19	RPO penalty	16	1	17
20	<b>TOTAL</b>	<b>2,362</b>	<b>3,554</b>	<b>5,916</b>

10. In addition to the above, in the following Appeals various issues are pending and in the event the Hon'ble Commission renders relief to the Petitioner on the said issues, then to that extent the same will have twin benefits inasmuch as further litigation can be contained as well as the exposure of carrying costs on the consumers could also be contained.

- a) The pending proceedings before Hon'ble Supreme Court namely Civil Appeal Nos. 8660 & 8661 of 2015, Civil Appeal Nos. 4323 & 4324 of 2015, Civil Appeal No. 4933 & 4906 of 2015, Civil Appeal No. 6959 & 6960 of 2015, Civil Appeal Nos. 1854 & 1855 of 2014, Civil Appeal Nos. 4010 & 4013 of 2014, Civil Appeal Nos. 9003 & 9004 of 2011, Civil Appeal Nos. 884 & 980 of 2010, W.P(C)No.104 & 105 of 2014 and other connected matters therein.

b) Appeal Nos. 290 of 2015, 156 of 2015, 236 of 2014, 231 of 2014 and 265 of 2013 pending adjudication before the Hon'ble ATE.

S. No	Tariff Orders/Orders	Date of Tariff Orders/ Other Orders	Appeal before Hon'ble ATE	Present Status
1.	True up for FY 2013-14, Aggregate Revenue Requirement and Distribution Tariff (Wheeling and Retail supply) for FY 2015-16	29.09.2015	Appeal No. 290 of 2015	Pending
2.	Order in Petition No. 14 of 2014 – In the matter of implementation of Hon'ble ATE judgment dated 30.10.2009 in Appeal No. 37 of 2008	17.07.2014	Appeal No. 231 of 2014	Pending
3.	Suo-moto Order in Petition No. 14 of 2014 – In the matter of implementation of Hon'ble ATE judgment dated 30.10.2009 in Appeal No. 37 of 2008	20.04.2015	Appeal No. 156 of 2015	Pending
4.	True up for FY 2012-13 and Aggregate Revenue Requirement and Distribution Tariff (Wheeling and Retail supply) for FY 2014-15	23.07.2014	Appeal No. 236 of 2014	Pending
5.	True up for FY 2011-12 Aggregate Revenue Requirement and Distribution Tariff (Wheeling and Retail supply) for FY 2013-14	31.07.2013	Appeal No. 265 of 2013	Pending
6.	Review of the judgment dated 02.03.2015 passed by the Hon'ble ATE in Appeal No. 177 and 178 of 2012.	02.03.2015	R.P. No. 17 of 2015 in A.No 177 & 178 of 2012	Pending
7.	True up of expenses upto FY 2014-15, Review of FY 2015-16, and Multi Year ARR from FY 2016-17 to FY 2020-21 and Tariff for FY 2016-17  True up of expenses for FY 2015-16	31.08.2017	DFR	Pending



It is respectfully submitted that the present petition is without prejudice to the rights and contentions of the Petitioner in the aforesaid cases pending before the higher Courts.

11. The Petitioner has filed a Petition under section 94 and section 62(4) of the Electricity Act 2003 read with clauses 57, 58 and 59 of the DERC (conduct of business) Regulations 2001, seeking review / revision/ clarification of the Tariff Order dated 31.08.2017 in Petition no. 21 and 23 of 2017 on 13 issues.

**PRINCIPLES:**

12. It is most respectfully submitted that while deciding the present petition this Hon'ble Commission will need to adhere to the following principles of law:

*“22. The Regulatory Commission being a statutory authority exercising statutory powers **is required to act in the manner the statutory provisions of the Act and statutory regulations prescribe.** When the Regulatory Commission, a statutory authority is required to determine tariff fixation in the particular manner and in terms of statutory regulations as well as the provisions of the Act, **it shall be done only in that manner or not at all.** This is the settled legal position as held by the Hon'ble Supreme Court in *Bhavnagar University vs. Palitana Sugar Mills (P) Ltd.* (2003) Volume 2 SCC 111.”*

{Emphasis supplied}

[Ref: Hon'ble ATE judgment dated 21.07.2006 in Appeal Nos. 155, 156 & 157 of 2005]

*“31) .... The MYT Regulations are binding on the Commission as well as on the appellants. ....”*

{Emphasis supplied}

[Ref: Hon'ble ATE judgment dated 06.10.2009 in Appeal No. 36 of 2008]

The binding nature of the Regulations has also been laid down in a catena of judgments by the Apex Court and other forums, viz.

- a) PTC India Ltd. vs. CERC, AIR 2010 SC 1338]
- b) U.P. State Electricity Board, Lucknow vs. City Board, Mussoorie, (1985) 2 SCC 16];

- c) M/s Jagdamba Paper Industries (Pvt.) Ltd. and Ors. vs. Haryana State Electricity Board and Ors., AIR 1983 SC 1296];
- d) Smt. NaseemBano vs. State Of U.P. and Others AIR 1993 SC 2592;
- e) M/s Southern Technologies Ltd. vs. Joint Commissioner of Income Tax, Coimbatore 2010 (1) SCALE 329.

13. It is, therefore, respectfully submitted that while deciding the present ARR Petition, the Hon'ble Commission will need to be guided by inter alia the following mandates of the 2003 Act and Tariff Policy:

a) Electricity Act, 2003:

*"61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

*(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*

*(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*

*(c) **the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;***

*(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*

*(e) **the principles rewarding efficiency in performance;***

*(f) **multi year tariff principles;***

*(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission;*

*(h) the promotion of co-generation and generation of electricity from renewable sources of energy;*

*(i) **the National Electricity Policy and tariff policy:***

*{Emphasis supplied}*

b) Tariff Policy, 2015 notified by the Central Government under Section 3 of the Electricity Act, 2003:

***“Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro- thermal mix in case of adverse natural events.”***

*{Emphasis supplied}*

Furthermore, the Tariff Policy also mandates approval of the capital expenditure necessary to meet the minimum service standards. There is a need to accelerate performance improvement and reduction in losses which will be in the long term interest of consumers by way of lower tariffs.

*“a) Return on Investment*

*Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. **The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.***

..

*Making the distribution segment of the industry efficient and solvent is the key to success of power sector reforms and provision of services of specified standards. Therefore, the Regulatory Commissions need to strike the right balance between the requirements of the commercial viability of distribution licensees and consumer interests. Loss making utilities need to be transformed into profitable ventures which can raise necessary resources from the capital markets to provide services of international standards to enable India to achieve its full growth potential. Efficiency in operations should be encouraged. Gains of efficient operations with reference to normative parameters should be appropriately shared between consumers and licensees.*

....

*At the beginning of the control period when the “actual” costs form the basis for future projections, there may be a large uncovered gap between required tariffs and the tariffs that are presently applicable. **The gap should be fully met through tariff***

charges and through alternative means that could inter-alia include financial restructuring and transition financing.

....

Working capital should be allowed duly recognizing the transition issues faced by the utilities such as progressive improvement in recovery of bills. Bad debts should be recognized as per policies developed and subject to the approval of the State Commission.

Pass through of past losses or profits should be allowed to the extent caused by uncontrollable factors.

....

The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:

- a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;
- b. Recovery of outstanding Regulatory Asset along with carrying cost of Regulatory Assets should be time bound and within a period not exceeding seven years. The State Commission may specify the trajectory for the same."

{Emphasis supplied}

**FACTORS IMPACTING THE PETITIONER AND THE CONSUMERS:**

14. A commercially sustainable tariff is a sine qua non for the health of the electricity sector. The financial health of the Discom is in the larger interests of the consumers themselves. The entire scheme and intent of the EA 2003 is consumer interest. However, consumer interest does not lie in lower tariff's alone. It lies equally, if not more, in the financial health of the utilities which are dedicated to serve their consumers. It is further submitted that the Petitioner is severely affected owing to the following factors amongst others, and therefore the Petitioner requests the Hon'ble Commission to take the same into consideration while disposing of the present petition :-
  - a) The creation and continuance of Non-cost-reflective tariff over the years for the Petitioner Licensees;

- b) Absence of justifiable True up of uncontrollable expenditure including but not limited to power purchase costs;
- c) Long Regulatory Time taken in True up of uncontrollable expenditure;
- d) Variation in the power purchase costs nationwide which is uncontrollable;
- e) The realistic rate of sale of surplus electricity is lower than the rate factored in by the Hon'ble Commission and the differential amount from the total power purchase cost creates an adverse effect on the Petitioner ;
- f) Progressive buildup of revenue gap and regulatory assets since FY 2006-07;
- g) Absence of any time bound mechanism for recovery of accumulated shortfall;
- h) Lower rates of carrying costs granted by the Hon'ble Commission as against the market lending rate;
- i) Very low rate of recovery of carrying cost of Regulatory Asset (RA), which ought to be in consonance with Hon'ble ATE Judgment dated November 11, 2011 in O.P. No. 1 of 2011 thereby ensuring that the Petitioner not only recovers the carrying cost on the RA during the year but also 1/3rd of the outstanding RA principal. In terms of the same, the surcharge ought to be revised appropriately so that the RA is recovered speedily without burdening the future consumers with the past costs. It is submitted that the decision of the Hon'ble Commission to continue to retain a meager surcharge of 8% over the revised tariff strikes at the very root of the ability of the Petitioner to be in a position to clear its outstanding dues to the generating companies and the transmission licensee who have/had issued disconnection notices.
- j) The need to implement the Hon'ble ATE judgment dated November 11, 2011 in O.P. No.1 of 2011 which has mandated the State Commissions to allow carrying costs on the regulatory asset in a manner so as to avoid the problem of cash flow to the distribution licensees such as the Petitioner.
- k) The Petitioner as a distribution licensee is committed and remains obligated to reduce AT&C losses against the stiff loss reduction trajectory specified by the Hon'ble Commission and the Petitioner is likely to be heavily penalized for non-achievement of loss reduction trajectory. At the same time, the Petitioner finds it extremely difficult to raise funds for undertaking schemes for loss reduction from financial institutions due to the continued absence of time bound amortization

schedule of the Regulatory Assets by the Hon'ble Commission which is required in line with the Tariff Policy and findings of the Hon'ble ATE vide its judgment dated November 11, 2011 in O.P. No. 1 of 2011, reported as 2011 ELR (APTEL) 1742.

- l) The ability of the Petitioner to liquidate the dues of the generating companies and the transmission licensee is adversely affected owing to the increase of the regulatory assets from Rs. 158.50 crore upto FY 2006-07 to Rs. 2661.95 crore upto FY 2015-16 as against the mandatory requirement of being amortized within the first MYT control period ending FY 2011-12 as per the DERC MYT Regulations, 2007 read with the Tariff Policy;
  - m) Seriously deepening the financial crisis owing to the non-cost reflective tariffs as determined under the various tariff orders as well as creation of revenue gap year after year and creation of regulatory assets as an ordinary course rather than the statutory mandate of it being required to be created only as a matter of exception;
  - n) Results in a situation where financial institutions are not willing to extend financial assistance to the Petitioner to carry on its licensed business.
15. The Hon'ble Commission is mandated in law to decide the present Petition in a manner ensuring timely recovery of all costs so that ultimately the consumers do not have to bear the burden of avoidable carrying cost on those amounts and costs that are not passed through in the retail tariffs on a regular basis.
16. The filing of the Petition should not be treated as curtailing any right or claim of BYPL, which it is permitted to recover in terms of its License and Orders of the Hon'ble Commission, Hon'ble ATE (including the principle of parity / equality in treatment of Discoms) and or any other proceedings relevant to the entitlement of the Petitioner.
17. The Petitioner in the present ARR Petition has made certain assumptions in relevant sections, and has endeavored to comply with the various applicable legal and regulatory directions of the Hon'ble Commission.
18. The Petitioner is filing the present Petition to ensure prompt determination of tariff as to seek the truing up of expenses up to FY 2016-17 and ARR and Tariff for FY 2018-19. Though the Petitioner has made all efforts and has tried diligently to ensure the filing of a comprehensive Petition, it may be possible that some aspects/components/claims have not been dealt in detail and/or may have been inadvertently omitted. It is submitted that such inadvertent omission/deficiency, if any, would not amount to any

waiver of any entitlement/claim by the Petitioner. The Petitioner craves leave of this Hon'ble Commission and reserves its rights to supplement the present Petition with additional facts, additional affidavits, additional submissions and claims, if any.

### **PRAYERS**

1. In view of the above, the Petitioner most respectfully prays that the Hon'ble Commission may be pleased to:
  - (a) Admit the ARR Petition;
  - (b) Condone the delay in filing of the Petition.
  - (c) True Up the expenses and Revenue for FY 2016-17 culminating into the pass through of Rs. 223 Crore as quantified in Chapter 3 of this ARR Petition ;
  - (d) Grant the financial impact of Rs. 5,916 Crore upto FY 2015-16 by implementing the judgments of the Hon'ble ATE as quantified in Chapter 3 of this ARR Petition;
  - (e) Grant the financial impact of Rs. 3112 Crore upto FY 2015-16 on account of Past Claims as quantified in Chapter 3 of this ARR Petition;
  - (f) Liquidate the accumulated Revenue Gaps up to FY 2016-17 and carrying cost (amounting to Rs. 13,017 Crore) through an appropriate surcharge and grant carrying costs on the accumulated revenue gaps through a separate additional surcharge;
  - (g) Allow the ARR and Tariff for FY 2018-19 as computed in Chapter 4 and 5 of this ARR Petition;
  - (h) Implement the directions issued by the Hon'ble ATE dated July 12, 2011, October 6&30, 2009, November 28, 2014, March 2, 2015 and May 15, 2015 in Appeal No. 36&37 of 2008, Appeal No. 147 of 2009, Appeal No. 62 of 2012, Appeal No. 178 of 2012 and RP No. 13 of 2015 respectively in the matter of BSES Yamuna Power Limited vs. Delhi Electricity Regulatory Commission & Others.;



- (i) Implement the directions issued to the Hon'ble Commission by the Hon'ble ATE dated July 30, 2010, May 31, 2011 and November 28, 2013 in Appeal No. 153 of 2009, Appeal No. 52 of 2008 and Appeal No. 14 of 2012 respectively in the matter of North Delhi Power Limited vs. Delhi Electricity Regulatory Commission & Others., in accordance with the principle of maintaining equity and parity amongst all the Discoms (in cases where specific directions are not issued in case of the Petitioner);
- (j) Implement and give effect to the principles laid down by the Hon'ble ATE in Judgment dated 11.11.2011 passed in O.P. No. 1 of 2011.
- (k) Grant relief with respect to the issues raised before the Hon'ble ATE in I.A. No. 321 of 2015 in Appeal No. 178 of 2012, i.e. the Clarification Application filed by this Hon'ble Commission which is disposed off by the Hon'ble ATE vide judgment dated October 31, 2017.
- (l) Implement and give effect to the principles laid down by Hon'ble ATE in judgment dated May 15, 2017 read with February 23, 2015 in Appeal No. 104 of 2017 and Appeal No. 111 of 2014 in the matter of BSES Yamuna Power Limited vs. Delhi Electricity Regulatory Commission.
- (m) Give effect to any order/direction/ judgment as issued by the Hon'ble ATE in Appeal Nos. 290 of 2015, 156 of 2015, 236 of 2014, 231 of 2014 and 265 of 2013 pending adjudication before the Hon'ble ATE, subsequent to the filing of and/ or during the pendency of the present Petition.
- (n) Approve all expenses in the truing up while determining Aggregate Revenue Requirement without deferring any or part of the expense in the form of Regulatory Asset.
- (o) Take into account the latest Tariff Orders, if any, issued by Appropriate Commission for the Generating and Transmission companies from which the

Petitioner draws power, while determining the power purchase and transmission costs of the Petitioner.

- (p) Allow additions / alterations / changes/ modifications of petition and place on developments/ facts/ documents that come to the knowledge of the Petitioner at a future date.
- (q) Condone any inadvertent Omissions / errors/ rounding off difference / shortcomings.
- (r) Pass other order/s granting relief which this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

Prayed accordingly

PETITIONER

Through:

Gagan B Swain

Head – Regulatory Affairs

Authorized Signatory

BSES Yamuna Power Limited

BEFORE THE DELHI ELECTRICITY REGULATORY COMMISSION

C BLOCK, SHIVALIK, MALVIYA NAGAR, NEW DELHI

Petition No.... of .....

IN THE MATTER OF:-

BSES Yamuna Power Limited ("BYPL")

Shakti Kiran Building,

Karkardooma,

New Delhi-110032.

.....

PETITIONER

AND

IN THE MATTER OF:-

Truing up of expenses upto FY 2016-17, in terms of the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling and Retail Supply Tariff) Regulations, 2007 (hereinafter referred to as "MYT Regulations, 2007") And the Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Wheeling and Retail Supply Tariff) Regulations, 2011 (hereinafter referred to as "MYT Regulations, 2011") read with Section 62 of the Electricity Act 2003 (hereinafter referred to as "the Act"), and read with Sections 11 and 28 of Delhi Electricity Reforms Act 2000 to the extent applicable, the Delhi Electricity Regulatory Commission (Conduct of Business) Regulation 2001 and Condition 24 of the License for Distribution and Retail

Supply of Electricity issued by the Hon'ble Delhi Electricity Regulatory Commission (hereinafter referred to as "the Hon'ble Commission").

IN THE MATTER OF:-

Annual Tariff Petition for FY 2018-19 under Section 62 of the Electricity Act, 2003 read with Regulation 11 & 12 and other relevant provisions under Delhi Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2017 (hereinafter referred to as "Tariff Regulations, 2017") and the Delhi Electricity Regulatory Commission Business Plan Regulations, 2017 (hereinafter referred to as "Business Plan Regulations, 2017") and also under Sections 11 and 28 of Delhi Electricity Reforms Act 2000 to the extent applicable, the Delhi Electricity Regulatory Commission (Conduct of Business) Regulation 2001 and Condition 24 of the License for Distribution and Retail Supply of Electricity issued by the Hon'ble Commission.

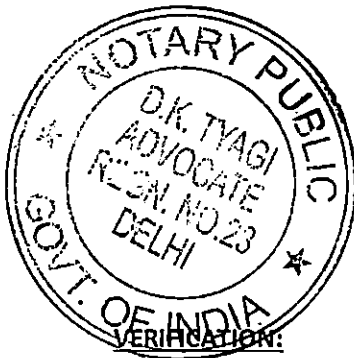
Register Entry No. 1013  
Page No. 371 - 372  
Date 07/11/2017  
Document Affidavit

Gagan Bihari Swain  
Gagan B. Swain  
Head- Regulatory Affairs  
Emp. No. 41017929  
BSES Yamuna Power Ltd.

**AFFIDAVIT CERTIFYING THE PETITION:**

I, Gagan Bihari Swain, S/o.Brahmananda Swain, aged about 44 years, having my office at Shakti Kiran Building, Karkardooma, New Delhi -110032, do hereby solemnly affirm and state as follows:

1. I am working with BSES Yamuna Power Limited, the Petitioner herein, as Head (Regulatory Affairs) and am duly authorized by the said Petitioner to make the present affidavit.
2. I further say that statements made and data presented in the present True up and ARR Petitions are to the best of my knowledge derived from records of the Company and based on estimations arising from data and or records of the Company. Further, to my knowledge and belief, no material information has been concealed in the aforesaid Petition.



Gagan B. Swain  
Head- Regulatory Affairs  
Emp. No. 41017929  
BSES Yamuna Power Ltd.

**DEPONENT**  
**GAGAN BIHARI SWAIN**  
Head (Regulatory Affairs)  
Authorized Signatory  
BSES Yamuna Power Limited

I, Gagan Bihari Swain, the Petitioner hereby solemnly affirms that the contents of above affidavit are true to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

Verified by me on this 07<sup>th</sup> Day of November, 2017 at New Delhi.

Gagan B. Swain  
Head- Regulatory Affairs  
Emp. No. 41017929  
BSES Yamuna Power Ltd.

**DEPONENT**  
**GAGAN BIHARI SWAIN**  
Head (Regulatory Affairs)  
Authorized Signatory  
BSES Yamuna Power Limited

WITNESS:

Prachi Jain  
DGM –Regulatory Affairs  
BSES Yamuna Power Limited.  
Shakti Kiran Building, Karkardooma,  
New Delhi-110032

**ATTESTED**  
  
**NOTARY PUBLIC DELHI**  
**GOVT OF INDIA**

**- 7 NOV 2017**

## **Volume -I**

**Chapter-1: Performance during FY 16-17**

**Chapter-2: Compliance to Directives**

**Chapter 3: Truing-up for FY 2016-17**

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## List of Abbreviations

Abbreviation	Full form
AAD	Advance Against Depreciation
ABR	Average Billing Rate
Act	Electricity Act' 2003
ADB	M/s. Asian Development Bank
AFC	Annual Fixed Charges
A & G	Administrative & General
AMR	Automated Meter Reading
APCPL	Aravali Power Company Private Limited
APTEL	Appellate Tribunal for Electricity
APDRP	Accelerated Power Development and Reform Programs
ARR	Aggregate Revenue Requirement
AT & C	Aggregate Technical and Commercial
ATE	Appellate Tribunal for Electricity
BBMB	Bhakra Beas Management Board
BEST	M/s Brihanmumbai Electric Supply & Transport Undertaking
BYPL	M/s BSES Yamuna Power Limited
BST	Bulk Supply Tariff
BTPS	Badarpur Thermal Power Station
BYPL	M/s BSES Yamuna Power Limited
CAGR	Compounded Annual Growth Rate
CC	Carrying Cost
CCO	Customer Care Officer
CEA	Central Electricity Authority
CERC	Central Electricity Regulatory Commission
CESC	M/s Calcutta Electricity Supply Company
CESU	M/s. Central Electricity Supply Utility
CFL	Compact Florescent Lamp
CGRF	Consumer Grievance Redressal Forum
CGS	Central Generating Stations
CISF	Central Industrial Security Force
CPI	Consumer Price Index
CPRI	Central Power Research Institute
CTC	Cost to the Company
CSERC	Chhattisgarh State Electricity Regulatory Commission
CSPDCL	Chhattisgarh State Power Distribution Co. Ltd
DA	Dearness allowance
DDA	M/s Delhi Development Authority
DERC	Delhi Electricity Regulatory Commission
DIAL	M/s. Delhi International Airport Limited
DISCOM	Distribution Company

<b>Abbreviation</b>	<b>Full form</b>
DJB	M/s. Delhi Jal Board
DMRC	M/s Delhi Metro Rail Corporation
DPCL	M/s Delhi Power Corporation Limited
DPPG	Delhi Power Procurement Group
DPR	Detailed Project Report
DT	Distribution Transformer
DTL	M/s Delhi Transco Limited
DVB	M/s Delhi Vidyut Board
DVC	M/s Damodar Valley Corporation
EA'03	Electricity Act' 2003
EHV	Extra High Voltage
EIC	Electrical Inspector Clearance
ELR	Energy Law Reports
FPA	Fuel Purchase Adjustment
FRSR	Fundamental Rules & Supplementary Rules
FY	Financial Year
GENCO	Generation Company
GERC	Gujrat Electricity Regulatory Commission
GFA	Gross Fixed Assets
GIS	Geographical Information System
Gol	Government of India
GoNCTD	Government of National Capital Territory of Delhi
GPA	Gross Per Annum
GT	Gas Turbine
HEP	Hydro Electric Project
HERC	Haryana Electricity Regulatory Commission
HR	Human Resource
HRA	House Rent Allowance
HT	High Tension
HVDS	High Voltage Distribution System
ICC	Indian Chamber of Commerce
ICWAI	Institute of Cost & Works of Accounts of India
IDBI	M/s. Industrial Development Bank of India
IDG	International Data Group
IEX	Indian Energy Exchange
IP Station	M/s Indraprastha Station
IPPAI	Independent Power Producers Association of India
IPGCL	M/s Indraprastha Power Generation Co. Ltd
IT	Information Technology
IVR	Interactive Voice Response
JVVNL	M/s Jaipur Vidyut Vitaran Nigam Limited, Rajasthan
JJ	Jhuggi Jhopri
KESCO	M/s Kanpur Electric Supply Company Limited, Uttar Pradesh

Abbreviation	Full form
Kms	Kilo Meters
kV	Kilo Volt
kVAh	Kilo Volt Ampere hour
kVArh	Kilo Volt Ampere Resistance hour
kW	Kilo Watt
kWh	Kilo Watt Hour
LDC	Load Despatch Centre
LPSC	Late Payment Surcharge
LT	Low Tension
LTAB	Low Tension Aerial Bunched
LVDS	Low Voltage Distribution System
MCD	M/s Municipal Corporation of Delhi
MDI	Maximum Demand Indicator
MERC	Maharashtra Electricity Regulatory Commission
MLHT	Medium Load High Tension
MoP	Ministry of Power
MRBD	Meter Reading and Bill Distribution
MSEDCL	Maharashtra State Electricity Distribution Co. Ltd
MU	Million Units
MVA	Million Volt Ampere
MW	Mega Watt
MYT	Multi Year Tariff
NABL	National Accreditation Board for Testing and Calibration Laboratories
NCT	National Capital Territory
NDPL	M/s North Delhi Power Limited
NGO	Non-Government Organisation
NHPC	M/s National Hydroelectric Power Corporation Ltd.
NJPC	Nathpa Jhakri Power Corporation Ltd.
No.	Number
NOIDA	New Okhla Industrial Development Authority
NPCIL	M/s Nuclear Power Corporation India Limited
NRLDC	Northern Region Load Dispatch Centre
NTI	Non-Tariff Income
NTPC	M/s National Thermal Power Company Ltd.
O&M	Operation and Maintenance
OP	Original Petition
PFC	M/s. Power Finance Corporation
PGCIL	M/s Power Grid Corporation of India Limited
Ph	Phone
PLF	Plant Load Factor
PPA	Power Purchase Agreement
PPCA	Power Purchase Cost Adjustment
PPCL	M/s Pragati Power Corporation Ltd.

Abbreviation	Full form
PTC	Power Trading Corporation
RA	Regulatory Asset
R & M	Repair and Maintenance
RE	Renewable Energy
REC	Rural Electrification Corporation
REL	M/s Reliance Energy Limited
RERC	Rajasthan Electricity Regulatory Commission
RoCE	Return on Capital Employed
RPO	Renewable Purchase Obligation
RPS	Renewable Purchase Specifications
RRB	Regulated Rate Base
Rs.	Rupees
RST	Retail Supply Tariff
RWA	Resident Welfare Association
SBI - PLR	State Bank of India - Prime Lending Rate
SCADA	Supervisory Control And Data Acquisition
SERC	State Electricity Regulatory Commission
SGS	State Generating Stations
SJVNL	M/s Satluj Jal Vidyut Nigam Limited
SLDC	State Load Dispatch Centre
SMS	Short Message Service
Sq. Kms	Square Kilometers
SoP	Standard of Performance
SVRS	Special Voluntary Retirement Scheme
TANGEDCO	Tamil Nadu Generation and Distribution Corporation
T&D	Transmission and Distribution
THDC	Tehri Hydro Development Corporation Ltd.
TNERC	Tamil Nadu Electricity Regulatory Commission
TPDDL	Tata Power Delhi Distribution Limited
TRANSCO	Transmission Company
T.O.	Tariff Order
UERC	Uttarakhand Electricity Regulatory Commission
UPERC	Uttar Pradesh Electricity Regulatory Commission
UI	Unscheduled Interchange
VRS	Special Voluntary Retirement Scheme
WACC	Weighted Average Cost of Capital
WPI	Whole Sale Price Index
Y-o-Y	Year on Year



# **Chapter -1**

## **Performance during FY 2016-17**

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## 1. PERFORMANCE DURING FY 2016-17

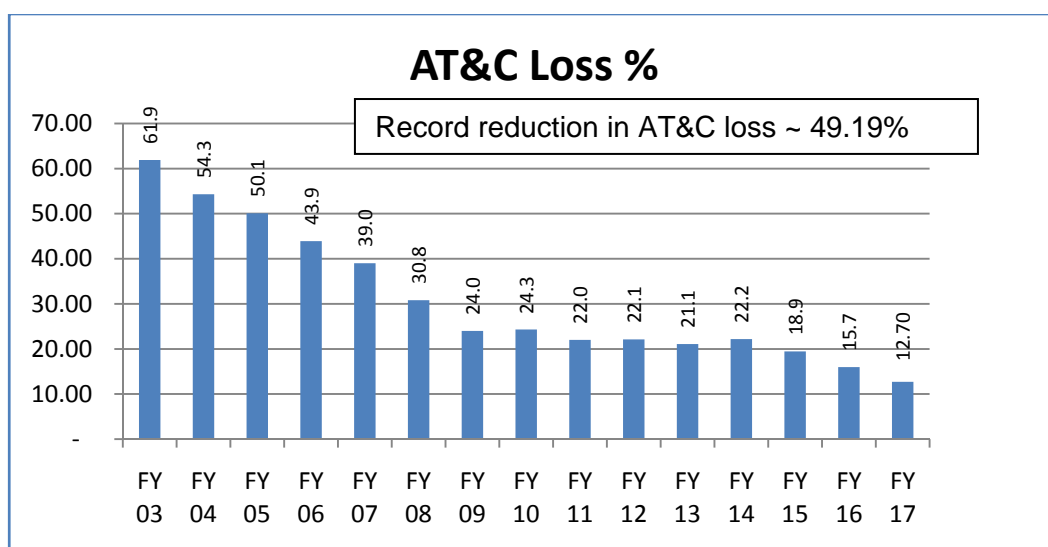
### 1.1 AT&C Loss Reduction

1.1.1 During FY 2016-17, the Petitioner has significantly reduced the AT&C Loss by 20.43% over the existing actual loss levels of 15.96% (True-up in Tariff Order dated 31.08.2017) in FY 2015-16. The actual loss level for FY 16-17 is 12.70%. The reduction in percentage points is 3.26%.

1.1.2 BYPL has shown exemplary performance in the loss reduction with an average reduction of 3.28% per annum in absolute terms since July 2002. The reduction is amongst the highest average loss reduction rate achieved by any power distribution utility in the country.

1.1.3 Further, noteworthy that the AT&C Losses were reduced from a level of over 61.89% in FY 2002-2003 to 12.70% at the end of FY 2016-17. The graph below shows a steep and consistent decline in the AT&C loss levels in the last two decades indicating considerable results from various loss reduction initiatives taken from time to time:

**Figure: AT&C Loss levels since takeover**



As shown above, there is a tremendous reduction of 49.19 percentage points in AT&C loss levels signifying BYPL's commitment to the loss reduction objective.

### 1.2 Performance Standards



1.2.1 BYPL has been consistently delivering high performance and is meeting the performance standards prescribed by the Hon'ble Commission. The achievement against set performance levels (as specified in the Delhi Electricity Supply Code and Performance Standards Regulations, 2007) is summarized as below:

- **Normal fuse-off Calls:** The Petitioner has been able to achieve compliance of 99.64% against Hon'ble Commission's benchmark of 99%.
- **Line Breakdown:** The Petitioner has been able to achieve compliance of 99.67% against Hon'ble Commission's benchmark of 95%.
- **Distribution Transformer Failure:** The Petitioner has been able to achieve compliance of 100% against Hon'ble Commission's benchmark of 95%.
- **Scheduled Outage:** The Petitioner has been able to achieve compliance of 99.93% in 'maximum duration in single stretch' and 99.56% in 'Restoration of supply by 6 PM' against Hon'ble Commission's benchmark of 95%.
- **Billing Mistakes:** The Petitioner has been able to achieve compliance of 0.01% against Hon'ble Commission's cap of 0.2%.
- **Faulty Meter:** The Petitioner has been able to achieve compliance of 0.95% against Hon'ble Commission's benchmark of 3%.

The table below summarizes standards of performance achieved during FY 2016-17

**Table 1.1: Standards of Performance during FY 2016-17**

Parameter	Prescribed Time Limit/Measure	Overall standard of performance	Number of complaints received	No. of complaints attended within specified timelines	% Complied during FY 2016-17
Normal Fuse-Off Calls	Within three hours for Urban areas	At least 99% calls received should be rectified within prescribed time limits in both Cities and Towns and in Rural areas	454988	453360	99.64%
	Within eight hours for Rural areas				
Line	Within six hours for	At least 95% of	4205	4191	99.67%

Breakdown	Urban areas	cases resolved within time limit in both Cities and Towns and in Rural areas			
	Within twelve hours for Rural areas.				
Distribution Transformer Failure	Temporary supply to be restored within four hours from alternate source, wherever feasible.	At least 95% of DTRs to be replaced within prescribed time limits in both Cities and Towns and in Rural areas	26	26	100%
	Rectification of fault and thereafter restoration of normal power supply within twelve hours.				
Scheduled Outage	Maximum duration in a single stretch shall not exceed 12 hours.	At least 90% of cases should be complied within prescribed time limits.	5399	5395	99.93%
	Restoration of supply by 6:00 PM.		5399	5375	99.56%
<b>Parameter</b>	<b>Prescribed Time Limit/Measure</b>	<b>Overall standard of performance</b>	<b>No. of Bills issued</b>	<b>No. of Bills with mistakes</b>	<b>Percentage</b>
Billing Mistakes	Licensee shall maintain the percentage of bills requiring modifications following complaints to the total number of bills issued.	Not exceeding 0.20%	18549198	1364	0.01%
<b>Parameter</b>	<b>Prescribed Time Limit/Measure</b>	<b>Overall standard of performance</b>	<b>No. of Meters (As on last day of Mar'17)</b>	<b>No. of defective meters reported</b>	<b>Percentage</b>
Faulty Meter	Licensee shall maintain the percentage of defective meters to the total number of meters in service.	Not exceeding 3%	1581044	15047	0.95%

Reliability Indices during FY 2016-17:

SAIFI	SAIDI	MAIFI
0.94015	1.18471	0.0000

### 1.3 Peak Demand:

BYPL has successfully met its peak demand, which was 1493 MW in FY 16-17.

### 1.4 Growth in Consumer Base:

Total number of consumers being served by BYPL at the end of FY 2016-17 was 15.81 lakh as against 15.20 lakh consumers served at the end of FY 2015-16 thus exhibiting significant annual growth of 3.95%. Evidently, BYPL's consumer density is one of the largest among the private distribution utility in the country.

### 1.5 Improvement in Distribution Network:

To maintain service quality, strengthening and modernizing the distribution network is a constant effort at BYPL. There has been a commensurate increase in the distribution network capacity across all levels – EHV/HT/LT for improving the services and supply reliability. This is despite regular challenges with respect to space constraints & other hindrances in the license area being served by BYPL.

### 1.6 Network Augmentation during FY 16-17 is summarized as below:

Particulars	Addition during the year
No. of Power Transformers	2
EHV Capacity (MVA)	58
Shunt Capacitors (MVar)	22
No. of Distribution Transformers	67
Distribution Transformer Capacity (MVA)	75
No. of 11 kV feeders	23
Length of 11 kV cables (Ckt Kms)	45
Total No. of LT feeders	210
Length of LT lines laid (Ckt kms)	35

### 1.7 Other Initiatives undertaken by BYPL

- 1.7.1 **BYPL takes lead in net metering:** BSES Discoms have become the first Discoms in Delhi to energise roof-top solar 'net metering' projects. BSES Yamuna Power Limited (BYPL) has energised 64 net metering projects till FY 2016-17, totalling nearly 3.2 MW of solar power.

1.7.2 **“Safety Week” celebrated reinforcing all round health and safety:** BYPL observed the ‘Fire Safety Week’ from April 14<sup>th</sup> to April 21<sup>st</sup>, 2016. To achieve this goal, safety awareness programmes like trainings, tool talks, safety pep talks for the employees, Safety campaign, banner display, pamphlets distribution, safety warning stickers pasted on poles and Safety street play for the consumer, Internal and external safety audits were undertaken.

1.7.3 **Consumer Safety Awareness:** Nukkad Nataks carried out in August and September, 2016 to make the public / consumer aware about the electrical safety. Total 100 shows were conducted at different locations in BYPL covering approximately 11,000 people.

Safety plays carried out in 19 schools along with safety pamphlet and gifts distribution. A gathering of around 4300 school students were covered during the Safety “Plays”.

1.7.4 **Domestic Efficient Light (DELP) and Fan Program (DEFP):** As also required under the provisions of DERC (DSM) Regulations 2012, BYPL has implemented Domestic Efficient Light Program (DELP) and Domestic Efficient Light Program (DEFP) for sale of LED lights through an Energy Service Company (ESCO), M/s. Energy Efficiency Services Limited, New Delhi.

The Scheme for LED bulb distribution under Domestic Efficient Light Program in Delhi was launched by Prime Minister on 1<sup>st</sup> May 2015. **On 22<sup>nd</sup> May 2015 Agreement was signed between EESL and BYPL.** A total of 5.17 Lakhs LED Bulbs, 8414 nos. of LED lights and 215 energy efficient fans were sold in FY 2016-17.

1.7.5 **Online Application for New Connection:** To facilitate the consumers, applications for New Connection & other documents can now be uploaded/ submitted through BSES Website.

1.7.6 **Additional Payment Avenues:** BYPL has introduced additional payment avenues

i.e. UPI, BHIM App, Mobile wallet (Paytm, Mobiwik etc.) with existing payments options of Cash counters, Online payments, Cheque Drop box, Kiosk machines & IDBI bank counters etc.

**1.7.7 Introduction of BSES App:** BYPL has launched BSES Mobile App for registration of no current supply complaints, new connection requests, address change requests, options for bill view with past history & option for payment of bill. This mobile application can be downloaded from Google play store and BSES Delhi website. In FY 2016-17, total 2.23 lakhs consumers downloaded BSES App.

**1.7.8 Utkrisht Sehbhagi Meetings:** Regular meetings are organised with our various representatives of Utkrisht Sehbhagi to involve them in key areas like loss reduction, enforcement raids, tariff hearings etc. Focus has been on winning customer confidence through better engagement coupled with increased outreach programs to instill confidence in our Consumers for easy accessibility / ready comfort.

**1.7.9 Upgraded Call Centre:** BYPL has upgraded it's call centre which is a single point contact for registering consumer requests and complaints pertaining to Billing / Meter issues, Power supply related issues, Reporting of power theft & **many more through introduction of latest technologies like multilingual, IVRS based Call centre.**

**1.7.10 Reaching out to Consumers:** We share important news/information with our consumers through print media, conducting awareness programs, Nukkad Natak, Energy Conservation Drive, MLA, Newsletters and Sanjha Prayas Camps & other special initiatives.

**1.7.11 Multiple contact points for Customers:** A consumer can reach us through various mediums for queries or redressal of complaints/request such as Customer Help Desks (CHDs), SMS, Website, Letter/Email to Customer Care Department, Helpline, Mobile application for easy access with BSES account on

the mobile handset.

**1.7.12 SMS Service:** BYPL provides facility for registration of various types of customer complaints through SMS and also provides the information to Customers about status of expected resolution time in case of no current complaints through SMS.

**1.7.13 Doorstep Service:** For the convenience of our consumers BYPL has Doorstep Services, wherein a customer request for New Connection, Load Enhancement, Name Change, Category Change, Address Correction etc. gets processed at the doorstep of the consumer. The consumer has to just call our helpline for the said request; he need not come to our office for making above mentioned requests. The consumer can request New Connection, Load Enhancement, Name Change, Category Change, Address Correction etc.

**1.7.14 Implementation of IOMS (Intelligent Outage Management system):** IOMS is successfully implemented at BYPL for faster identification and resolution in case of Power interruption.

**1.7.15 BYPL Observed Earth Hour:** BYPL sent messages to the consumers for observing Earth Hour on 25<sup>th</sup> March 2017 from 8.30 P.M to 9.30 P.M and saved 95 MW of electricity.

## 1.8 Key Process Improvements

Focus has always been on winning customer confidence through enhanced processes, which results in reduction of complaints, resolution time, minimize errors and substantial improvements in all key customer satisfaction.

**1.8.1 Commercial side: Meter to cash processes** - *The focus areas have been as follows:*

- Quality meter reading through direct downloading thereby eliminating manual intervention, better algorithms, rationalisation of meter reading codes and improved monitoring.

- Regular auditing of billing software and error fixing.
- Continuous Improvement in the working of Meter Management Group

**1.8.2 Enforcement / Recovery of dues**

- Defined and rolled out incentive schemes for personnel against set targets.
- Coordinated with media to educate ill effects of power theft / Need of tariff hike.
- Amnesty Schemes – Voluntary Disclosure, Late Payment Surcharge (LPSC) Waiver, Lok Adalats.

**1.8.3 Key improvements seen are as follows:**

- Download percentage for electronic meters has increased.
- Percentage of provisional bills has reduced.
- Bill amendments reduced.
- Ease of Doing Business –
  - New Connection (Online Web Based Application Request).
  - Online Demand Note Payment.
- Sanjha Prayas – Consumer Awareness & Education Camps continued and augmentation with more structured approach with a view to enhance consumer perception.
- Red Bills - Red bills served to consumers having outstanding dues to distinguish defaulters at first instance.
- SMS/Tele calling for reminding – Tele calling done based on consumer categorization. Specific focus was laid on consumers who generally pay bills on time, first time defaulters and who always pay after due date. SMS sent twice a week in last quarter of the year.
- Enhance Customer Service - QMS Machine at 3 Customer Care Centres (Installed at Nandnagri, Mayur Vihar & Vasundhara Enclave).
- Reward for Paying Consumers - Lucky draw for “Zero Balance Scheme 2016” where twenty three lucky winners were selected by our “Utkrisht Sehbhagi” through a lucky draw by using software developed by our IT department. The

prizes to the lucky winners shall be distributed.

- Twitter & Facebook - BSES Discoms has initiated Twitter & Facebook in order to build connect with its consumers which shall help in branding and update consumer about BSES Discoms.
- Implementation of E-Mailing Application for sending document to customers for New Connection
- Interactive Voice Response (IVR) for Demand Note in New Connection applications.
- Location of nearest customer care centre can be tracked by BSES App.

## 1.9 New Initiatives

### 1.9.1 Metering Pilots

- **Intelligent Group Metering Solution:** Each group meter consists of 9, 1 Ph meters, intelligent relay units, remote energy display unit, data concentrator unit and data transfer over GPRS. The system provides data availability on web portal on pre defined schedule or on demand.
- **Pilot project of Smart Meters:** 3 Phase Smart Meters at consumer premises along with communication infrastructure based on RF mesh, Android based consumer portal for real time energy data access to consumers.
- **Roll out:** Implementation of Meter Data Management (MDM) system to capture online metering information for GPRS leased AMR meters.

### 1.9.2 Technical initiatives specific for Loss Reduction

- Replacement of overhead bare conductors with Aerial Bunched Cables (ABC)
- Implementation of Feeder / DT metering (In-house Energy Management System)
- 11kV Feeder and DT Health monitoring
- Implementation of Pole Mounted Metering cum Distribution Boxes
- Installation of APFC Panels for Automatic Power Factor improvement
- Implementation of LT Less schemes for minimizing commercial and technical loss



### 1.9.3 Technical initiatives for effective Cost Optimization

- In-house repair workshop for :-
  - Transformers
  - RMUs / Switchgears
- Improved Maintenance Practices with regular use of :-
  - Thermo Scanning
  - Partial Discharge Test Kit

### 1.9.4 Other Technical Advancements

- Pilot DMS project at Mayur Vihar Division.
- Automatic switches for street lights across licensee area.
- 100% GIS digitization complete for EHV and HT network.
- Web based Intelligent Outage Management System.
- BSES Mobile App.

### 1.9.5 Green Technology

- Penetration of Mobile App – App for Complaints, Billing Details & Sharing suggestions.
- Promoting Digital (Cashless) Payment by Customers.
  - ✓ Energy, Demand Note & Schemes.
  - ✓ Proposed incentive scheme for cashless payment.
- Promoting online new Connection Process.
- Promoting e-bill (Paperless Bill).
- Promoting Energy Efficient Electric Equipments.

## 1.10 Revenue Generation from Other Businesses

1.10.1 BYPL has been one of the pioneering Discoms which proactively explored various avenues for revenue generation by engaging in ancillary businesses such as providing consulting services. The revenue generated through such ventures has been used to reduce tariff burden on our esteemed customers. During FY 2016-17, BYPL has managed to generate revenue from other businesses

including Non Tariff to the tune of Rs. 92 Crores.

### **1.11 Consumer friendly initiatives**

- 1.11.1 SMSes for informing power outage are being sent to the consumers on registered mobile number.
- 1.11.2 316 Nos. of Sanjha Prayas camps were carried out in East & Central Delhi with a view to reach out to the people at their doorstep.
- 1.11.3 149 Nos. of Energy Conservation, Education & Safety drive conducted in various Schools within BYPL areas for educating school children about need for energy conservation & safety.
- 1.11.4 271 sessions of Nukkad Natak were conducted for creating awareness regarding Evil effects of Electricity theft, Safety & Energy Conservation amongst residents of High Loss areas of East & Central Delhi.
- 1.11.5 Hundred and four sessions for information dissemination under “CAMPAIGN AGAINST ELECTRICITY THEFT” were conducted in high loss areas of Daryaganj, Chandni Chowk, Yamuna Vihar and Nand Nagri to sensitize and generate awareness in Community about judicious use of energy resources, energy conservation and health aspects. The campaign covered school students, Teachers, High Profile Local residents, RWAs and Utkrisht Sehbhagis.
- 1.11.6 Display of Grievance Redressal Mechanism at all customer care centers.
- 1.11.7 Call forwarding of complaint center calls to Call Center ensuring registration and resolution of all complaints.
- 1.11.8 Mobile Application for enabling consumers for register no current complaints, DSS requests and access of “My Account” through mobile with call forwarding to help line number.
- 1.11.9 Consumer Meet was conducted on 07<sup>th</sup> March’17. There were a total 184 Nos of consumers (RWAs & Utkrisht Sehbhagi's) across all the three Circles (South East, North East & Central Circle) as participants in the meet.
- 1.11.10 Online demand note payment facility through our web site i.e [www.bsesdelhi.com](http://www.bsesdelhi.com)
- 1.11.11 Medical Health Check-up Camps for “Utkrisht Sehbhagis in the month of Apr’16

& April'17 on occasion World Health Day.

- 1.11.12 Queue Management System installed at 14 division offices for managing customer traffic at division offices
- 1.11.13 Reward & recognition Scheme introduced for regular paying consumers.
- 1.11.14 A dedicated helpline no 41999808 launched for handling Emergency & Streetlight complaints.
- 1.11.15 WhatsApp group formed at division level for sharing Power related issues/ Suggestions/ Initiatives.
- 1.11.16 SMS facility for registration of technical complaint.
- 1.11.17 Conducted Customer Satisfaction Survey from an external agency which would help us in improving our services further.
- 1.11.18 Cash back offers on bill payment through PhonePe, MobiKwik & Paytm.
- 1.11.19 Introduced WhatsApp numbers for providing information on theft (8588892156) and Vigilance number (8010930719) to stop corruption.
- 1.11.20 Tatkal Electricity: To cater to the demands of the festive season, BYPL has started providing "Tatkal" electricity connections for Pujas, Pandals and Marriages etc. Under this scheme, consumer will be able to get a temporary connection on the same day of applying and completing the commercial formalities.

## 1.12 Awards and recognition

Sr. No	Forum	Category	Award Details
1	TISS CLO award	HR Resource	HR Training Award for AT&C Loss Reduction Program by Tata Institute Social Science –Leap Vault CLO Award
2	ICAI	Power Distribution	National Award for Excellence in Cost Management by Institute of Cost and Works Accounts of India's (ICWAI)
3	British Safety Council (International)	Safety	International Safety Award by British Safety Council, London
4	ISGF	Technology Excellence	Appreciation Award for Technology of Year 2016 by India Smart Grid Forum of India
5	CIDC	Quality & Safety	Achievement Award - Supervisors Category by Construction Industry Development Council
6	Indian Bravehearts	Operational Excellence	National Garav Award for Operational Excellence by Indian Bravehearts (NGO)

Sr. No	Forum	Category	Award Details
7	ICC	Green Energy	Green Grid Award by Indian Chamber of Commerce
8	ICC	Quality of Service	Ranked 3rd in Quality of Service by Indian Chamber of Commerce
9	ICC	Business Excellence	Ranked 2nd Overall Distribution Operations by Indian Chamber of Commerce
10	ICC	Innovative Discoms	Ranked 2nd Overall Distribution Operations by Indian Chamber of Commerce
11	IPPAI	Innovation	Innovation Award in Seamless SCADA Adaption using power management tool for saving electricity through power procurement by Independent Power Producer Association of India
12	IPPAI	Innovation	Innovation Award in Lab Tracking Module (LTM) by Independent Power Producer Association of India
13	TISS CLO award	HR Resource	HR Award for on simulation program on SCADA Adaption by Tata Institute Social Science - LeapVault CLO Award
14	Quality Council of India	Infrastructure Sector	DL Shah National Quality Award -Certificate of Merit for Intelligent Outage Management System by Quality Council of India
15	Skoch BSE Award (Certificate of Merit)	Business Excellence	AT&C Loss Reduction by Improving the DT Cleaning Mechanism Using the PDCA Cycle Approach (At field level)
16	British Safety Council (International)	Safety	International Safety Award by British Safety Council, London

### 1.13 Corporate Social Responsibility

**1.13.1 Mahila Shiksha Kendra:** BYPL with NGO partner Dhanpatmal Virmani Education Trust & Management Society conducts Mahila Shiksha Kendras (MSK) in 40 low income residential clusters of East and Central Delhi. At these MSKs, six month functional literacy classes are conducted for women and remedial classes are also conducted for children. In FY16, over 4900 women and children benefited from this initiative.

**1.13.2 Women Self Defence Trainings:** Together with teams from Delhi Police Special Unit for Women & Children Nanakpura, BYPL has organised Women Self Defence trainings in East and Central Delhi since October 2013. BYPL conducted six such training camps in Government Girls Schools in FY16, over 950 school

girls were imparted this important life skill.

- 1.13.3 **Vocational Training:** In FY16, BYPL supported 425 young men and women from EWS for various short term vocational training courses run by NGOs in Delhi. The youngsters enrolled for courses in Desktop Publishing, Beautician Training, Retail Management, Cutting and Tailoring.
- 1.13.4 **Voluntary Blood Donation Camps:** BYPL organized five Voluntary Blood Donation Camps at BYPL locations. In total 106 units of blood were donated by BYPL Staff and customers to the Government Hospital Blood Banks in BYPL area.
- 1.13.5 **Health Care Assistance to charitable institutions:** BYPL assisted TLM Community Hospital, Red Cross General Maternity & Child Care Hospital, Amar Jyoti Research & Rehabilitation Centre and Sree Krishna Medical & Research Centre with donation of various medical equipments.
- 1.13.6 **Free Mobile Health Camps:** BYPL with NGO partner PHD Rural Development Foundation (PHDRDF) conducted 132 mobile health camps for providing better healthcare facility to residents of low income clusters in East and Central Delhi. At these 132 BYPL Mobile Health Camps 15,282 people benefited from free consultation and medicines.
- 1.13.7 **Free Eye Screening Camps:** BYPL partnered with I-Care Hospital, a unit of Ishwar Charitable Trust to conduct 15 eye screening camps for residents of low income clusters in East and Central Delhi. In FY17, free consultation, reading glasses and eye drops were provided to 3494 beneficiaries.

## **Chapter -2**

# **Compliance to Directives**

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## 2. Compliance to Directives

The Hon'ble Commission has given various directives in Tariff Order dated September, 29, 2015 and Tariff Order dated August 31, 2017. The Petitioner is hereby submitting the compliance status as follows:

### 2.A. Compliance to directives given in Tariff Order dated September 29, 2015

#### 1. Directive to make timely payment of bills/dues to central and state generating stations and transmission utilities (Ref: Para 6.1 of the Tariff Order dated 29.09.2015)

*The Commission directs the Petitioner to make timely payment of bills/dues to central & state generating stations and transmission utilities. No Late Payment Surcharge shall be allowed as a pass through in the ARR, on account of delayed payments.*

##### **Compliance:**

BYPL has submitted the month wise audited cash flow statement to the Hon'ble Commission. It is evident from the statements that the licensee has paid to the Generating / Transmission companies to the extent of revenue recovered from consumers after meeting its statutory obligations and bank repayments i.e. as per its paying capacity. Hence the directive of the Hon'ble Commission has been complied with to the extent of funds available with the Licensee.

Also, matter pertaining to payment to Generating Stations and Transmission Utilities are presently sub-judice before Hon'ble Supreme Court in the matter of W.P. 104 & 105 of 2014 and APTEL in the matter of Appeal Nos. 27, 28 & 32 of 2014. Without prejudice to the Petitioner's submissions made in this matter, it is humbly submitted that pursuant to Hon'ble Supreme Court's order dated 23.03.2014, BYPL is making payment to Central and State Gencos and Transmission Utilities against current dues to the extent it is possible. It would not be out of place to re-iterate that these payments are being made against severe odds due to huge persisting accumulated regulatory assets.

#### 2. Directive to optimise cost of a procurement of power (Ref: Para 6.2 of the Tariff Order dated 29.09.2015)

*The Commission directs the Petitioner to optimise its cost of a procurement of power. No fixed cost on account of regulated power will be allowed as a pass through in the ARR.*

##### **Compliance:**



The aforesaid directive for optimisation of cost is being complied by the Petitioner. Also, the instant matter on disallowance is presently sub-judice before Hon'ble APTEL in Appeal 265 of 2013, Appeal 235 of 2014 and Appeal 290 of 2015.

**3. Directive to restrict cost of expensive power to the cost of regulated cheaper power (Ref: Para 6.3 of the Tariff Order dated 29.09.2015)**

*If the distribution licensee purchases any expensive power to meet the demand during any time zone for which cheaper power has been regulated due to non payment of dues, in such an eventuality, the cost of such expensive power purchases will be restricted to the cost of regulated cheaper power to that extent at the time of true up.*

**Compliance:**

The aforesaid directive does not entail a direct compliance report by the Petitioner. However BYPL optimises power procurements except the cases of forced schedule or technical requirements of SLDC/NRLDC etc.

**4. Directive to borne transmission charges in case power is regulated by DTL/Interstate Transmission Licensee (Ref: Para 6.4 of the Tariff Order dated 29.09.2015)**

*In case the power is regulated by DTL/Interstate Transmission Licensee due to non payment of their dues, then in that case the transmission charges borne by the Petitioner besides the treatment of regulated power as detailed in above directive will also not be allowed.*

**Compliance:**

The aforesaid directive does not entail a direct compliance by the Petitioner.

**5. Directive to ensure that asset capitalization takes place within a reasonable time. (Ref: Para 6.5 of the Tariff Order dated 29.09.2015)**

*Petitioner has to ensure that asset capitalization takes place within a reasonable time and the approved cost so that IDC does not increase disproportionately. Before start of work, the utility is aware of the actual approved cost of completion of the scheme. As a norm, the Commission would consider the completion period indicated by the utility at the time of seeking approval of the scheme from the Commission and the capital cost approved by the Commission. In exceptional cases where completion of a project gets delayed or there is a change in cost of completion beyond 15% of approved cost, for reasons beyond the control of the utility, the utility will take prior approval of the Commission of any additional amount that needs to be capitalized in excess of the approved cost. This can only be an exception but not the rule and the utility would need to justify delay in capitalization in each case where delay and/or*

cost overrun takes place. Failing this or pending receipt of satisfactory explanation, the Commission would go by the completion period and the cost indicated in the Commission's approval to the scheme and provide for IDC accordingly.

**Compliance:**

The licensee would like to submit that the aforesaid Directive is being complied with.

**6. Directive to ensure availability of power supply for meeting the demand (Ref: Para 6.6 of the Tariff Order dated 29.09.2015)**

*The Commission directs the Petitioner to ensure availability of power supply for meeting the demand. The Petitioner shall ensure that the electricity which could not be served due to any reason what-so-ever shall not exceed 1% of the total energy supplied in units (kWh) in any particular month except in the case of force-majeure events which are beyond the control of the Petitioner.*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

**7. Directive to ensure cash limit of Rs.4000/- for bill collection (Ref: Para 6.7 of the Tariff Order dated 29.09.2015)**

*The Commission directs the Petitioner that there will be a cash limit of Rs.4000/- while accepting billing dues from consumers. Any bill above Rs.4000/- must be paid by any mode other than cash. This limit is also applicable in case of recovery of all types of dues including LPSC, Misuse charges, theft charges etc. No authority in the DISCOM is permitted to waive this condition pertaining to cash collection. Violation of this directive shall attract penalty to the level of 10% of total Cash collection exceeding Rs. 4000/-.*

**Compliance:**

The Petitioner would like to humbly submit that the instant matter is presently sub-judice before Hon'ble APTEL in Appeal 265 of 2013 and Appeal 236 of 2014. Till such time the matter is heard and decided by Hon'ble APTEL, the Petitioner has taken measures to ensure that no cash collection exceeding Rs.4000/- is being accepted and is thus complying with the aforementioned directive.

**8. Directive to allow deposit through irrevocable bank guarantee while renewing / revising contract demand for DMRC, Railways, DJB and DIAL ((Ref: Para 6.8 of the Tariff Order dated 29.09.2015)**

*The Commission directs the Petitioner that for DMRC, Railways, DJB and DIAL, the Security deposit charges against contract demand shall be allowed to deposit through irrevocable bank guarantee to be renewed/revised, as and when required depending on the billing demand as against prevailing practice of actual payment.*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

**9. Directive to fulfil RPO obligations during FY 2015-16 (Ref: Para 6.9 of the Tariff Order dated 29.09.2015)**

*The Commission directs the Petitioner that RPO requirements for green power for the year 2015-16, must be met along with requirements carried over from the previous year, and if so required by way of purchase of REC's from the exchange. Noncompliance of Renewable Purchase Obligation (RPO) shall attract penalty of 10% of the cost of REC for quantum of shortfall in RPO.*

**Compliance:**

The Petitioner has communicated its position pertaining to fulfillment of its Renewable Purchase Obligation in several earlier instances including vide letter no. RA/2016-17/BYPL/312 dated 17.03.2017. Further, the Petitioner vide its letter no. RA/2016-17/BYPL/321 dated 28.03.2017 requested Hon'ble Commission to carry forward the balance of Non-Solar shortfall to future years in anticipation of reduction in REC prices. Also, the Petitioner has filed a petition before the Hon'ble Commission on 20.04.2017 for fulfilment of RPO for FY 2016-17 in subsequent years in lieu of significant reduction in REC prices from 01.04.17 onwards which is still pending before Hon'ble Commission.

The Petitioner has also purchased 20 MUs of Non-solar REC in FY 2016-17.

It would also be pertinent to mention that the matter concerning competitive bidding for procurement of power from renewable energy sources is presently sub-judice before the Hon'ble Commission.

Without prejudice to its rights and contentions, the petitioner would further like to submit that there can be only two types of penalties as provided in Section 142 of the Electricity Act, 2003 namely (i) not exceeding Rs. 1 lakh; and (ii) "any other penalty...

under this Act”.

10% cost of REC is not “any.. penalty... under this Act”. Therefore, such a penalty would be *ultra vires* the 2003 Act.

The APTEL has held in Appeal No. 71 of 2007 by its judgment dated May 4, 2009 that Tariff Order/tariff proceeding cannot be used for providing a penalty or a penal mechanism. The APTEL inter alia held that “...Commission cannot convert its power of tariff fixation given by section 61 and 62 of the Electricity Act 2003 into a proceeding for imposing penalty”. This would also be *ultra vires* the statute. Hence, the penal provision in the Tariff Order dated 29.09.2015 is contrary to and in the teeth of the aforesaid Judgment of the APTEL. Moreover, it has been settled by APTEL in Appeal No. 183 of 2010 by its judgment dated 19th April 2011 that the levy of penalty must precede with show cause notice and opportunity of being heard.

**10. Directive pertaining to dishonoured cheque (Ref: Para 6.10 of the Tariff Order dated 29.09.2015)**

*In case the consumer's cheque is dishonoured, then he may be warned and given a final opportunity for payment of cheque along with LPSC. If a second case of dishonouring of the cheque occurs with the same consumer within next three months, it shall be stipulated that payment in future will be received only by DD up to a period of next six months.*

**Compliance:**

The licensee would like to submit that adherence to the aforesaid Directive is ongoing and is being complied with.

**11. Directive to the power factor of 0.9 for Non functional industries (Ref :Para 6.11 of the Tariff Order dated 29.09.2015).**

*The Commission has already decided to provide relief to those consumers whose industries are non-functional for the period when it is either under shut down or not functional and who utilize up to 5% of the sanctioned load (not available for part use of the load), then the conversion from kW to kVA for the purpose of calculation of fixed charges may be done considering 0.9 power factor.*

**Compliance:**

The licensee would like to submit that adherence to the aforesaid Directive is ongoing and is being complied with.

**12. Directive not to undertake any transactions relating to purchase/sale of power without open tendering process. (Ref: Para 6.12 of the Tariff Order dated 29.09.2015):**

*The Commission directs the distribution licensee not to undertake any transactions relating to purchase/sale of power without open tendering process. If any purchases/sales are affected through agent/ middleman or a trader through related parties other than the power exchange (s), then any trading margin paid to such agents/ middleman or trader will also not be admissible as a pass through in the ARR.*

**Compliance:**

The petitioner would like to submit that Hon'ble Commission's extant directives pertaining to open tendering is being complied with.

**13. The Commission further directs the distribution licensee as under**

- a. *To conduct a safety audit and carry out preventive maintenance as per schedule and submit a compliance report within three months (Para 6.13(a) of Tariff Order dated 29.09.2017 )*

**Compliance:**

The Petitioner vide letter reference no. RA/BYPL/2017-18/176 dated 10.11.2017 submitted with the Hon'ble Commission report of safety audit conducted during 2016-17.

- b. *To submit the information in respect of Form 2.1 (a) as per revised format issued by the Commission to the utilities on monthly basis latest by 21st day of the following month (Para 6.13(b) of Tariff Order dated 29.09.2017);*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters;

- i. Letter ref no. RA/BYPL/2016-17/53 dated 27.05.2016
- ii. Letter ref no. RA/BYPL/2016-17/103 dated 06.07.2016
- iii. Letter ref no. RA/BYPL/2016-17/113 dated 20.07.2016
- iv. Letter ref no. RA/BYPL/2016-17/146 dated 23.08.2016
- v. Letter ref no. RA/BYPL/2016-17/170 dated 21.09.2016
- vi. Letter ref no. RA/BYPL/2016-17/188 dated 21.10.2016
- vii. Letter ref no. RA/BYPL/2016-17/212 dated 21.11.2016
- viii. Letter ref no. RA/BYPL/2016-17/243 dated 21.12.2016
- ix. Letter ref no. RA/BYPL/2016-17/276 dated 24.01.2017
- x. Letter ref no. RA/BYPL/2016-17/301 dated 20.02.2017

- xi. Letter ref no. RA/BYPL/2016-17/327 dated 23.03.2017
  - xii. Letter ref no. RA/BYPL/2017-18/9 dated 20.04.2017
- c. *To submit the compliance report of 100% consumer metering within a month from the issuance of the said Tariff Order (Ref: Para 6.13 (c) of the Tariff Order dated 29.09.2017);*

**Compliance:**

The Compliance report of 100% consumer metering has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/2015-16/221 dated 29.10.2015.

- d. *To submit the energy audit report in respect of their network at HT level and above within three months (Ref: Para 6.13 (d) of the Tariff Order dated 29.09.2017 );*

**Compliance:**

The energy audit report in respect of their network at HT level and above has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/2017-18/166 dated 02.11.2017.

- e. *To submit the Detailed Project Report (DPR) for energy Audit at LT level within six months of the issuance of the said Order. (Ref: Para 6.13 (e) of the Tariff Order dated 29.09.2017);*

**Compliance:**

In this regard the Petitioner would like to submit that energy audit at LT level is conducted at regular intervals at sub-cluster and FL level.

Quarterly report of the same are uploaded on BSES website having link T&D Loss Vs Constituency Mapping>> Sub-cluster wise DT-Loss report >> select month.

- f. *To submit the Auditor's certificate in respect of Form 2.1(a) on quarterly basis within the next quarter (Ref: Para 6.13 (f) of the Tariff Order dated 29.09.2017)*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters;

- i. Letter ref no. RA/BYPL/2016-17/133 dated 03.08.2016 (Q1 of FY'17).
- ii. Letter ref no. RA/BYPL/2016-17/194 dated 07.11.2016 (Q2 of FY'17).
- iii. Letter ref no. RA/BYPL/2016-17/288 dated 02.02.2017 (Q3 of FY'17).
- iv. Letter ref no. RA/BYPL/2017-18/152 dated 10.10.2017 (Q4 of FY'17).

- g. *To submit monthly report to the Commission giving details of category wise*

*consumer addition and their details latest by 21st day of the following month (Ref: Para 6.13 (g) of the Tariff Order dated 29.09.2017);*

- h. To submit monthly report to the Commission giving details of number of connections disconnected / reconnected and their details latest by 21st day of the following month (Ref: Para 6.13 (h) of the Tariff Order dated 29.09.2017);*
- i. To submit monthly report to the Commission on change of consumer category latest by 21st day of the following month (Ref: Para 6.13 (i) of the Tariff Order dated 29.09.2017);*

### **Compliance:**

The Petitioner has complied with the aforesaid directives (g), (h) & (i). The Information has been submitted with the Hon'ble commission vide the following letters;

- i. Letter ref no. RA/BYPL/2016-17/54 dated 27.05.2016.
  - ii. Letter ref no. RA/BYPL/2016-17/104 dated 06.07.2016.
  - iii. Letter ref no. RA/BYPL/2016-17/141 dated 12.08.2016.
  - iv. Letter ref no. RA/BYPL/2016-17/145 dated 23.08.2016.
  - v. Letter ref no. RA/BYPL/2016-17/171 dated 21.09.2016.
  - vi. Letter ref no. RA/BYPL/2016-17/189 dated 21.10.2016.
  - vii. Letter ref no. RA/BYPL/2016-17/217A dated 23.11.2016.
  - viii. Letter ref no. RA/BYPL/2016-17/244 dated 21.12.2016.
  - ix. Letter ref no. RA/BYPL/2016-17/277 dated 24.01.2017.
  - x. Letter ref no. RA/BYPL/2016-17/302 dated 20.02.2017.
  - xi. Letter ref no. RA/BYPL/2016-17/327A dated 23.03.2017.
  - xii. Letter ref no. RA/BYPL/2017-18/09A dated 20.04.2017.
- j. To incorporate the following information in the annual audited financial statements (Ref: Para 6.13 (j) of the Tariff Order dated 29.09.2017 )*
- i. Category-wise Revenue billed and collected,*
  - ii. Category-wise Surcharge billed and collected,*
  - iii. Category-wise PPAC billed and collected,*
  - iv. Category-wise Electricity Duty billed and collected,*
  - v. Category-wise subsidy passed on to the consumers during the financial year, if any,*
  - vi. Category-wise details of the surcharge billed on account of ToD,*
  - vii. Category-wise details of the rebate given on account of ToD,*
  - viii. Revenue billed on account of Own Consumption,*
  - xi. Revenue collected on account of enforcement/theft cases,*

### **Compliance**

The Petitioner submits that the abovementioned directive has been complied with and the Annual Audited Accounts for FY 2016-17 is submitted to the Hon'ble



Commission vide letter reference no. RA/BYPL/2017-18/167 dated 02.11.2017.

- k. *to submit annual auditor certificate in respect of power purchase details of the previous year by 30th July of the next financial year. The power purchase invoices received upto April month of the next financial year but pertaining to the previous year only will be considered towards power purchase cost of the said financial year; (Ref: Para 6.13 (k) of the Tariff Order dated 29.09.2017 );*

#### **Compliance**

The Petitioner submits that abovementioned directive has been complied with and the annual auditor certificate in respect of power purchase details for FY 2016-17 has been submitted with the Hon'ble Commission vide reference no. RA/BYPL/2017-18/84 dated 28.07.2017.

- l. *To submit the reconciliation statement in respect of power purchase cost/Transmission cost on a quarterly basis with respective Generation/Transmission companies (Ref: Para 6.13 (l) of the Tariff Order dated 29.09.2017);*

#### **Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters:

- i. Letter ref no. RA/BYPL/2016-17/134 dated 03.08.2016 (Q1 of FY'17).
  - ii. Letter ref no. RA/BYPL/2016-17/198 dated 08.11.2017 (Q2 of FY'17).
  - iii. Letter ref no. RA/BYPL/2016-17/286 dated 30.01.2017 (Q3 of FY'17).
  - iv. Letter ref no. RA/BYPL/2017-18/124 dated 05.09.2017 (Q4 of FY'17).
- m. *To strictly adhere to the guidelines on short-term power purchase/sale of power issued by the Commission from time to time and to take necessary steps to restrict the cost of power procured through short term contracts at Rs.5 per kWh. Further in case of short term power purchase at a rate higher than the above ceiling rate (of Rs.5 per kWh), the impact of such purchase on total short term power purchase shall not exceed 10 Paise /kWh during the financial year. In case the cost of power proposed to be procured exceeds the above limits, this may be brought to the notice of the Commission within 24 hours detailing the reasons or exceptional circumstances under which this has been done. The Commission reserves the right to restrict allowance to the permissible limit if proper justification is not provided (Ref: Para 6.13 (m) of the Tariff Order dated 29.09.2017);*

#### **Compliance**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.



- n. *To raise the bills for their own consumption of all their installations including offices at the Non-Domestic tariff for actual consumption recorded every month. The licensee may avail credit at zero tariffs to the extent of the normative self consumption approved by the Commission at the end of the financial year; (Ref: Para 6.13 (n) of the Tariff Order dated 29.09.2017);*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

- o. *To submit the quarterly progress reports for the capital expenditure schemes being implemented within 15 days of the end of each quarter (Ref: Para 6.13 (o) of the Tariff Order dated 29.09.2017);*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble Commission vide the following letters:

- i. Letter ref no. RA/BYPL/2015-16/129 dated 29.07.2016 (Q1 of FY'17).
  - ii. Letter ref no. RA/BYPL/2015-16/190 dated 22.10.2016 (Q2 of FY'17).
  - iii. Letter ref no. RA/BYPL/2016-17/285 dated 30.01.2017 (Q3 of FY'17).
  - iv. Letter ref no. RA/BYPL/2017-18/22 dated 01.05.2017 (Q4 of FY'17).
- p. *To submit the actual details of capitalization for each year for the Control Period by June 30 of the following year for consideration of the Commission.. All information regarding capitalization of assets shall be furnished in the formats prescribed by the Commission, along with the requisite statutory clearances/certificates of the appropriate authority/ Electrical Inspector, etc. as applicable for all EHV & HV works etc., and certificate of SLDC for commissioning/commercial operation.. (Ref: Para 6.13 (p) of the Tariff Order dated 29.09.2017);*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/2017-18/22 dated 01.05.2017.

- q. *To submit the capital expenditure schemes strictly in accordance with the Commission's "Guidelines for approval of Capital Investment Schemes" dated April 23, 2012.*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

- r. *To ensure that the petitions are filed in the prescribed format.*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

- s. *To maintain segment wise audit report for each identifiable business segment other than the regulated business in the audited financial statement of the Petitioner.*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

2.B. Compliance to directives given in Tariff Order dated August 31, 2017

1. **Directive to make timely payment of bills/dues to central and state generating stations and transmission utilities (Ref: Para 6.1 of the Tariff Order dated 31.08.2017)**

*The Commission directs the Petitioner to make timely payment of bills/dues to central & state generating stations and transmission utilities. No Late Payment Surcharge shall be allowed as a pass through in the ARR, on account of delayed payments.*

**Compliance:**

BYPL has submitted the month wise audited cash flow statement to the Hon'ble Commission. It is evident from the statements that the licensee has paid to the Generating / Transmission companies to the extent of revenue recovered from consumers after meeting its statutory obligations and bank repayments i.e. as per its paying capacity. Hence the directive of the Hon'ble Commission has been complied with to the extent of funds available with the Licensee.

Also, matter pertaining to payment to Generating Stations and Transmission Utilities are presently sub-judice before Hon'ble Supreme Court in the matter of W.P. 104 & 105 of 2014 and APTEL in the matter of Appeal Nos. 27, 28 & 32 of 2014. Without prejudice to the Petitioner's submissions made in this matter, it is humbly submitted that pursuant to Hon'ble Supreme Court's order dated 23.03.2014, BYPL is making payment to Central and State Gencos and Transmission Utilities against current dues to the extent it is possible. It would not be out of place to re-iterate that these

payments are being made against severe odds due to huge persisting accumulated regulatory assets.

**2. Directive to make payment of Rs. 160 Cr. to the Pension Trust in FY 2017-18 (Ref: Para 6.2 of the Tariff Order dated 31.08.2017)**

*A total amount of Rs. 160 Cr. has to be paid to the Pension Trust in FY 2017-18 by the Petitioner. The Petitioner shall submit reconciliation of payment which has already been made to Pension Trust during FY 2017-18 and the balance amount to be paid within one month of the issuance of this Tariff Order. Based on the reconciliation statement the Petitioner is directed to pay the balance amount out of (Rs. 160 Cr. – already paid during FY 2017-18) in 7 (seven) equal monthly instalments to pension trust. Any under / over recovery on account of payment to the Pension Trust shall be trued up by the Commission at the time of True Up of ARR of FY 2017-18.*

**Compliance:**

The Petitioner submitted with the Hon'ble Commission the status of compliance vide its letter ref no. RA/BYPL/2017-18/156 dated 11.10.2017.

**3. Directive to directly deposit the amount as per directive (6.2) in the account of Pension Trust (Ref: Para 6.3 of the Tariff Order dated 31.08.2017)**

*The Petitioner shall directly deposit the amount as per the aforesaid directive (6.2) in the following bank account, of Pension trust: .....*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

**4. Directive to restrict cost of expensive power to the cost of regulated cheaper power (Ref: Para 6.4 of the Tariff Order dated 31.08.2017)**

*If the Petitioner purchases any expensive power to meet the demand during any time zone for which cheaper power has been regulated due to non-payment of dues, in such an eventuality, the cost of such expensive power purchases shall be restricted to the variable cost of regulated cheaper power to that extent at the time of true up.*

**Compliance:**

The petitioner has been optimising the power procurement costs as directed by the Hon'ble Commission for overall benefit of the consumer.

**5. Directive to borne transmission charges in case power is regulated by DTL/Interstate Transmission Licensee (Ref: Para 6.5 of the Tariff Order dated 31.08.2017)**

*In case the power is regulated by DTL/Interstate Transmission Licensee due to non payment of their dues, in such case the transmission charges borne by the Petitioner shall also not be allowed.*

**Compliance:**

The petitioner has been optimising the power procurement costs as directed by Hon'ble Commission for overall benefit of the consumer.

**6. Directive to ensure availability of power supply for meeting the demand (Ref: Para 6.6 of the Tariff Order dated 31.08.2017)**

*The Commission directs the Petitioner to ensure availability of power supply for meeting the demand. The Petitioner shall ensure that the electricity which could not be served due to any reason what-so-ever shall not exceed 1% of the total energy supplied in units (kWh) in any particular month except in the case of force-majeure events which are beyond the control of the Petitioner.*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

**7. Directive to ensure cash limit of Rs.4000/- for bill collection at petitioners own collection centres/mobile vans and Rs. 50,000/- for accepting payment through cash by the consumers at designated scheduled commercial bank branches (Ref: Para 6.7 of the Tariff Order dated 31.08.2017)**

*It is directed that the Petitioner shall not accept payment from its consumers at its own collection centres/mobile vans in cash towards electricity bill exceeding Rs 4,000/- except from blind consumers and for court settlement cases or any other cases specifically permitted by the Commission. The limit for accepting payment through cash by the consumers at designated scheduled commercial bank branches shall be Rs. 50,000/-. Violation of this directive shall attract penalty to the level of 10% of total Cash collection exceeding these limits.*

**Compliance:**

The Petitioner would like to humbly submit that the instant matter is presently sub-judice before Hon'ble APTEL in Appeal 265 of 2013 and Appeal 236 of 2014. Till such time the matter is heard and decided by Hon'ble APTEL, the Petitioner has taken measures to ensure that no cash collection exceeding Rs.4000 and Rs. 50,000 is being accepted at own collection centres/mobile vans and designated scheduled

commercial bank branches respectively and is thus complying with the aforementioned directive.

**8. Directive to restrict the adjustment in units billed to a maximum of 1% of total units billed (Ref: Para 6.8 of the Tariff Order dated 31.08.2017)**

*The Commission directs the Petitioner to restrict the adjustment in units billed on account of delay in meter reading, raising of long duration provisional bills etc. to a maximum of 1% of total units billed.*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

**9. Directive to survey the electricity connections of hoardings and display at malls and multiplexes and ensure the billing in the category of advertisements/hoarding category (Ref: Para 6.9 of the Tariff Order dated 31.08.2017)**

*The Commission directs the Petitioner to survey the electricity connections of hoardings and display at malls and multiplexes and ensure the billing in the category of advertisements/hoarding category and to submit a compliance report within three months of the date of issuance of this order.*

**Compliance:**

The Petitioner submits that the aforesaid directive for survey is under progress and the compliance report will be submitted within the stipulated time.

**10. The Commission further directs the distribution licensee as under**

- a. *To provide the information to the consumer through SMS on various items such as scheduled power outages, unscheduled power outages, Bill Amount, Due date and Maximum Demand during the month, etc. as directed by the Commission from time to time (Ref: Para 6.10 (a) of the Tariff Order dated 31.10.2017);*

**Compliance:**

The Petitioner submits that adherence to the aforesaid directive is ongoing and is being complied with.

- b. *To maintain toll free number for registration of electricity grievances and to submit the quarterly report (Ref: Para 6.10 (b) of the Tariff Order dated 31.10.2017);*

**Compliance:**

The Petitioner has complied with the aforesaid directive and quarterly progress report has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/17-18/175 dated 09.11.2017.

- c. *To conduct a safety audit and submit a compliance report within three months (Para 6.10(c) of Tariff Order dated 31.08.2017);*

**Compliance:**

The Petitioner submits that the audit for FY 2017-18 is under progress and the compliance report will be submitted within the stipulated time.

- d. *To carry out preventive maintenance as per schedule (Ref: Para 6.10 (d) of the Tariff Order dated 31.10.2017);*

**Compliance:**

The Petitioner submits that adherence to the aforesaid directive is ongoing and is being complied with.

- e. *To submit the information in respect of Form 2.1 (a) as per revised format issued by the Commission to the utilities on monthly basis latest by 21st day of the following month (Ref: Para 6.10(e) of Tariff Order dated 31.08.2017);*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters;

- xiii. Letter ref no. RA/BYPL/2017-18/36B dated 20.05.2017
  - xiv. Letter ref no. RA/BYPL/2017-18/64 dated 30.06.2017
  - xv. Letter ref no. RA/BYPL/2017-18/83A dated 26.07.2017
  - xvi. Letter ref no. RA/BYPL/2017-18/112 dated 28.08.2017
  - xvii. Letter ref no. RA/BYPL/2017-18/137 dated 19.09.2017
  - xviii. Letter ref no. RA/BYPL/2017-18/178 dated 17.11.2017
- f. *To submit the energy audit report in respect of their network at HT level and above within three months (Ref: Para 6.10 (f) of Tariff Order dated 31.08.2017);*

**Compliance:**

The energy audit report in respect of their network at HT level and above has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/2017-18/166 dated 02.11.2017.

- g. *To submit the Auditor's certificate in respect of Form 2.1(a) on quarterly basis within*

*the next quarter (Ref: Para 6.10 (g) of Tariff Order dated 31.08.2017);*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters;

- i. Letter ref no. RA/BYPL/2017-18/153 dated 10.10.2017 (Q1 of FY'18).
  - ii. Letter ref no. RA/BYPL/2017-18/189 dated 29.11.2017 (Q2 of FY'18).
- h. To incorporate the following information in the annual audited financial statements (Ref: Para 6.10(h) of Tariff Order dated 31.08.2017);*
- i. Category-wise Revenue billed and collected,*
  - ii. Category-wise breakup of 8% and 3.70% Surcharge billed and collected,*
  - iii. Category-wise PPAC billed and collected,*
  - iv. Category- wise Electricity Duty billed and collected,*
  - v. Category-wise subsidy passed on to the consumers during the financial year, if any,*
  - vi. Category-wise details of the surcharge billed on account of ToD,*
  - vii. Category-wise details of the rebate given on account of ToD,*
  - viii. Street light incentive and material charges for street light maintenance,*
  - ix. Direct expenses of other business,*
  - x. Revenue billed on account of Own Consumption,*
  - xi. Revenue collected on account of enforcement/theft cases,*

**Compliance**

The Petitioner submits that the abovementioned directive has been complied with and the Annual Audited Accounts for FY 2016-17 is submitted to the Hon'ble Commission vide letter reference no. RA/BYPL/2017-18/167 dated 02.11.2017.

- i. To submit annual auditor certificate in respect of power purchase details of the previous year by 30th July of the next financial year *(Ref: Para 6.10(i) of Tariff Order dated 31.08.2017);*

**Compliance**

The Petitioner submits that abovementioned directive has been complied with and the annual auditor certificate in respect of power purchase details for FY 2016-17 has been submitted with the Hon'ble Commission vide reference no. RA/BYPL/2017-18/84 dated 28.07.2017.

- j. To submit the reconciliation statement in respect of power purchase cost/Transmission cost on a quarterly basis with respective Generation/Transmission companies (Ref: Para 6.10(j) of Tariff Order dated 31.08.2017);*



**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble commission vide the following letters:

- i. Letter ref no. RA/BYPL/2017-18/125 dated 05.09.2017 (Q1 of FY'18).
- ii. Letter ref no. RA/BYPL/2017-18/184 dated 28.11.2017 (Q2 of FY'18).

- k. *To strictly adhere to the guidelines on short-term power purchase/sale of power issued by the Commission from time to time and to take necessary steps to restrict the cost of power procured through short term contracts at Rs.5 per kWh. In case the cost of power proposed to be procured exceeds the above ceiling limit, this may be brought to the notice of the Commission within 24 hours detailing the reasons or exceptional circumstances under which this has been done. In absence of proper justification towards short term power purchase at a rate higher than the above ceiling rate (of Rs. 5 per kWh), the Commission reserves the right to restrict allowance of impact of such purchase on total short term power purchase not exceeding 10 paisa/kWh during the financial year. (Ref: Para 6.10(k) of Tariff Order dated 31.08.2017);*

**Compliance**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

- l. *To raise the bills for their own consumption of all their installations including offices at zero tariffs to the extent of the normative self consumption approved by the Commission and exceeding the normative limit of self consumption at Non-Tariff Domestic tariff for actual consumption recorded every month (Ref: Para 6.10(l) of Tariff Order dated 31.08.2017);*

**Compliance:**

The Petitioner submits that adherence to the aforesaid Directive is ongoing and is being complied with.

- m. *To submit the quarterly progress reports for the capital expenditure schemes being implemented within 15 days of the end of each quarter (Ref: Para 6.10(m) of Tariff Order dated 31.08.2017);*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/2017-18/81 dated 28.07.2017 (Q1 of FY'18).



- n. *To submit the actual details of capitalization for each quarter for the year within one month of the end of the quarter for consideration of the Commission. All information regarding capitalization of assets shall be furnished in the formats prescribed by the Commission, along with the requisite statutory clearances/certificates of the appropriate authority/ Electrical Inspector, etc. as applicable ( Ref: Para 6.10(n) of Tariff Order dated 31.08.2017)*

**Compliance:**

The Petitioner has complied with the aforesaid directive. The Information for Q1 of FY 2017-18 has been submitted with the Hon'ble Commission vide letter ref no. RA/BYPL/FY 17-18/143 dated 22.09.2017.

## **Chapter -3**

### **Truing-up upto FY 2016-17**

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**3. TRUE UP FOR FY 2016-17****3.1 Legislative Provisions and judicial directions with respect to Truing-up:**

- 3.1.1 The Hon'ble ATE has in its order dated November 11, 2011 in O.P. No. 1 of 2011 issued the following mandatory directions:

*"65. In view of the analysis and discussion made above, we deem it fit to issue the following directions to the State Commissions:*

- (i) Every State Commission has to ensure that Annual Performance Review, true-up of past expenses and Annual Revenue Requirement and tariff determination is conducted year to year basis as per the time schedule specified in the Regulations.*
  - (ii) It should be the endeavour of every State Commission to ensure that the tariff for the financial year is decided before 1<sup>st</sup> April of the tariff year. For example, the ARR & Tariff for the financial year 2011-12 should be decided before 1<sup>st</sup> April, 2011. The State Commission could consider making the tariff applicable only till the end of the financial year so that the licensees remain vigilant to follow the schedule for filing of the application for determination of ARR/ Tariff.*
- ..."*

- 3.1.2 The Hon'ble Commission notified MYT Regulations, 2011 on December 2, 2011 which was initially applicable for a period of 3 years, i.e., FY 2012-13 to FY 2014-15. MYT Regulations, 2011 was extended for a period of 1 more year, i.e, FY 2015-16.

Since the preparation of new MYT Regulations for the period starting from April 1, 2015 was likely to take time and delay the process of tariff determination for FY 2015-16, the Hon'ble Commission organised public hearing on September 30, 2014 for extension of MYT Regulations, 2011 for a period of 1 more year, i.e., FY 2015-16. Accordingly the Hon'ble Commission vide Order dated October 22, 2014 extended the applicability of MYT Regulations, 2011 till March 31, 2016.

- 3.1.3 The Hon'ble Commission issued Draft Composite (Tariff and Accounting) Regulations, 2015 on December 18, 2015 and invited Comments and suggestions from the stakeholders on the same. Pending notification of the said final Regulations, the Hon'ble Commission gave directions to

submit the Business Plan for the period FY 2016-17 to FY 2020-21 vide following letters:

S. No	Date of letters received from Hon'ble Commission	Basis for filing Business Plan
1	October 29, 2015	No Regulations
2	December 18, 2015	Draft Composite Tariff & Accounting Regulations, 2015 available on website of DERC on December 18, 2015
3	February 02, 2016	Draft Composite Tariff & Accounting Regulations, 2015 available on website of DERC on December 18, 2015
4	February 15, 2016	Prevailing Acts, Regulations and Policies
5	March 29, 2016	Prevailing Acts, Regulations and Policies

3.1.4 Accordingly, the Petitioner vide letter dated April 18, 2016 and April 21, 2016 submitted the Petition for Truing-up upto FY 2014-15, Review of FY 2015-16, Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff for FY 2016-17 and Business Plan for the period FY 2016-17 to FY 2020-21 respectively in accordance with the EA 2003 and Tariff Policy in absence of any notified Tariff Regulations applicable to the aforesaid period. The Hon'ble Commission admitted the aforesaid petition vide Order dated May 26, 2017, i.e., after a gap of 13 months and 8 days, i.e., after the expiry of the whole FY 2016-17. There is no Tariff Order for year in subject (FY 2016-17) for which Truing-up is required to be undertaken based on actuals.

3.1.5 The draft 2015 Tariff and Accounting Regulations were revised and on December 05, 2016, the Hon'ble Commission issued Draft (Terms and Conditions of Tariff) Regulations, 2016 and invited comments from stakeholders. On January 31, 2017, the Hon'ble Commission notified the DERC (Terms and Conditions for determination of Tariff) Regulations, 2017 (referred to as "Tariff Regulations 2017" hereinafter) in the official gazette dated February 2, 2017 which is applicable from February 1, 2017 onwards.

3.1.6 Regulation-139 of Tariff Regulations, 2017 states as under:

*"139. Performance review and adjustment of variations in the ARR and Revenue for the Utilities for FY 2016-17 shall be considered in accordance with the Delhi Electricity Regulatory Commission (Terms and Conditions for determination of Generation Tariff) Regulations, 2011, Delhi Electricity Regulatory Commission (Terms and Conditions*

*for determination of Transmission Tariff) Regulations, 2011 and Delhi Electricity Regulatory Commission (Terms and Conditions for determination of Wheeling Tariff and Retail Supply Tariff) Regulations, 2011.”*

3.1.7 Accordingly truing-up of FY 2016-17 is required to be undertaken as per DERC Tariff Regulations, 2011.

3.1.8 As regards truing-up, Regulation-4.7 of MYT Regulations, 2011 states as under:

***“Targets for Controllable Parameters***

***4.7 The Commission shall set targets for each year of the Control Period for the items or parameters that are deemed to be “controllable” and which include:***

*(a) AT&C Loss, which shall be measured as the difference between the units input into the distribution system for sale to all its consumer and the units realised wherein the units realised shall be equal to the product of units billed and collection efficiency:*

*Provided that units billed shall include the units realised on account of theft measured on actual basis i.e. number of units against which payment of theft billing has been realised;*

*(b) Distribution losses, which shall be measured as the difference between the net units input into the distribution system for sale to all its consumer and sum of the total energy billed in its Licence area in the same year;*

*(c) Collection efficiency, which shall be measured as ratio of total revenue realised to the total revenue billed in the same year:*

*Provided that revenue realisation from electricity duty and late payment surcharge shall not be included for computation of collection efficiency;*

*(d) Operation and Maintenance Expenditure which includes employee expenses, repairs and maintenance expenses, administration and general expenses and other miscellaneous expenses viz. audit fees, rents, legal fees etc;*

*(e) Return on Capital Employed;*

*(f) Depreciation; and*

*(g) Quality of Supply.” {emphasis added}*

3.1.9 Further as regards setting of targets, Regulation-9.2 of MYT Regulations, 2011 states as under:

***“ A9: DISPOSAL OF APPLICATION***

*...*

*9.2 Based on the Distribution Licensees’ filings, objections/ suggestions from public and other stakeholders, the Commission may accept the application with such modifications and/or such conditions as may be deemed just and appropriate and issue, within 120 days of*

*the receipt of the application and after considering all suggestions and objections from public and other stakeholders, **an Order containing, inter alia targets for controllable items and the approved ARR for the Wheeling Business and the ARR for the Retail Supply Business along with the Wheeling Tariff and Retail Supply Tariff.***

*(Emphasis supplied)*

3.1.10 As evident from the aforesaid Regulations, the Hon'ble Commission was required to set the target for various controllable parameters of FY 2016-17. However the Hon'ble Commission till date has not specified any target for FY 2016-17 for the controllable parameters as there is no ARR and Tariff order for FY 2016-17.

3.1.11 In this connection, several judgments of the Hon'ble ATE lay down that in case of expenditure in nature of AT&C Loss, Capital Expenditure requirements, O&M Expenses and so on, the targets have to be set by the Regulator before the commencement of the financial year. Relevant extracts from these Judgments binding on the Hon'ble Commission, are reproduced hereunder:

a) Judgment dated November 14, 2013: Reliance Infrastructure Limited versus MERC (Appeal No. 140 of 2011):

*"84. The analysis of the above chronology of events would indicate that the Commission had been fixing distribution loss reduction targets for a particular period after the said period is over.*

*85. On a perusal of the Commission's Tariff Regulations, it is clear that the Commission, in order to approve the ARR of a licensee for each financial year of the control period, ascertains distribution losses and provides a trajectory of reduction based on the potential reduction of loss. Having already factored in potential reduction, any further reduction is rewarded as efficiency gains and any failure to achieve the approved loss as per the trajectory is treated as efficiency loss.*

*86. In the light of the aforesaid, for any control period, the Commission is expected to ascertain the potential of reduction of technical & commercial loss as as to fix the trajectory under Regulation 16 so that the licensee is aware of the expectation of the Commission for distribution loss reduction target in the system. The licensee thus endeavours to better the known trajectory provided for since any variation therein would entitle the licensee to efficiency gain.*

*87. **Such trajectory is to be provided at the beginning of the Control Period since it would entail regulatory certainty to all stakeholders.***

*88. The distribution licensee acts on the basis of the **pre-fixed targets which are fixed at the beginning of the control period***

*and such trajectory would not be subject to any change depending upon the actual performance of the licensee during the entire control period or prior period thereto. Otherwise the sanctity of the trajectory given as per the Regulations is lost.”*

**(Emphasis supplied)**

As evident from the aforesaid, the AT&C Loss targets are required to be set at the beginning of the control period. In case there are indeed no target for FY 2016-17, the performance of the licensee cannot be measured against any normative targets or benchmark thereby making it subject to ‘actual’ figures following the doctrine of necessity. The Supreme Court has held that “38. *The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over.*” [Lalit Kumar Modi v. Board of Control for Cricket in India, (2011) 10 SCC 106 : (2012) 1 SCC (L&S) 374 at page 119]

Since, no targets were available for FY 2016-17, ‘actual’ figures have to be taken into account.

The DERC Tariff Regulations, 2011 has been sought to be applied for *inter alia* True Up of FY 2016-17 in terms of Regulation 139 of the Tariff Regulations, 2017 which is in force from February 1, 2017. This would imply that the 2011 Regulations could apply to the True Up of the months February and March FY 2017 only. Further the target for FY 2016-17 has not been specified till date. Therefore there is no target for benchmarking of actual AT&C Loss achieved during FY 2016-17. In view of the same, the Hon’ble Commission is requested to consider the proposal made by the Petitioner in the relevant sections of the Petition and consider actual revenue collected during FY 2016-17 for computation of revenue (gap)/ surplus.

- b) Judgment dated January 11, 2012: SIEL Limited versus The Punjab State Electricity Regulatory Commission (Appeal No. 57 of 2008):

“7...

*The Tribunal in its Order dated 26.05.2006 only directed the Commission to set benchmarks for the future in order that the parties concerned ought to be informed of the basis of the limits*



*prescribed in advance....”*

As evident from the aforesaid, the benchmark for O&M Expenses and AT&C losses are required to be set for the future, i.e., at the beginning of the year so that the Licensee can strive to achieve the same during the period.

3.1.12 In accordance with the aforesaid Judgments of the Hon’ble Tribunal, the Petitioner has adopted the following methodology while computation of Truing-up requirement for FY 2016-17:

a) AT&C Loss:

Regulation-4.8 of MYT Regulations, 2011 stipulates setting of AT&C Loss targets for each year of the control period as under:

*“4.8 The target AT&C Loss levels to be achieved by each Distribution Licensee during each year of the Control period shall be determined by the Commission based upon benchmarking, past trends, business plan submitted by the Distribution Licensee and any other factor considered relevant by the Commission.”*

However the Hon’ble Commission did not specify any AT&C Loss target for FY 2016-17. In absence of any AT&C Loss target for FY 2016-17, the Petitioner has proposed the AT&C Loss targets for FY 2016-17 based on the actual loss level achieved during previous years and has claimed overachievement incentive. The revenue has also been considered on actual basis.

b) Power Purchase Cost:

Regulation-4.21 of MYT Regulations, 2011 states as under:

*“4.21 The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:*

- (a) Variation in revenue/ expenditure on account of uncontrollable sales/ power purchase respectively shall be trued up every year;*
- (b) ...”*

Accordingly the power purchase cost has been considered on actuals.

c) Operation and Maintenance Expenses:

As per the MYT Regulations, 2011, O&M Expenses have been categorised as controllable parameter. Regulation-4.2 of DERC Tariff Regulations, 2011 states as under:

*“4.21 The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:*

*...*

*(b) For controllable parameters,*

*(i) Any surplus or deficit on account of Operation and Maintenance (O&M) expenses shall be to the account of the Licensee and shall not be trued up in ARR; and*

*...”*

As evident from the aforesaid clause, any surplus or deficit on account of the deviation from the trajectory set by the Hon’ble Commission shall be to the account of the Licensee. However the Hon’ble Commission has not set any target for O&M Expenses for FY 2016-17. Therefore, the actual O&M Expenses for FY 2016-17 have been considered.

d) Depreciation:

The Petitioner has computed depreciation on the average GFA net of consumer contribution during FY 2016-17.

e) RoCE:

As per Regulation-5.10 of MYT Regulations, 2011, RoCE shall be computed by multiplying WACC with RRB. The Petitioner has computed RRB in accordance with the methodology specified in Regulation-5.9 of MYT Regulations, 2011.

As regards computation of WACC, Regulation-5.11 specifies as under:

*“5.11 The WACC for each year of the Control Period shall be computed at the start of the Control Period in the following manner:*

$$WACC = \left[ \frac{D/E}{1 + D/E} \right] * r_d + \left[ \frac{1}{1 + D/E} \right] * r_a$$

*Where,*

*....*

*rd is the cost of debt and shall be determined at the beginning of the Control Period after considering Licensee’s proposals, present*

*cost of debt already contracted by the Licensee, credit rating, benchmarking and other relevant factors (risk free returns, risk premium, prime lending rate etc.)*

*re is the Return on Equity and shall be considered at 16% post-tax: ..."*

As evident from the aforesaid Regulations, the rate of return on equity is specified as 16%. However the cost of debt was required to be determined at the beginning of the control period. In absence of any cost of debt determined by the Hon'ble Commission for FY 2016-17, the actual cost of debt ought to be considered for computation of WACC for purpose of computation of RoCE during FY 2016-17. Accordingly, the Petitioner has considered the actual rate of interest on capex loans i.e. 13.84% and ROE at the rate of 16% for computation of WACC during FY 2016-17.

f) Income-tax:

Income-tax has been computed after grossing-up ROE by MAT rate observed during FY 2016-17.

g) Non-Tariff Income:

Regulation-5.35 of MYT Regulations, 2011 states as under:

*"5.35 All income being incidental to electricity business and derived by the Licensee from sources, including but not limited to profit derived from disposal of assets, rents, net late payment surcharge (late payment surcharge less financing cost of late payment surcharge), meter rent (if any), income from investments, income on investment of consumer security deposit and miscellaneous receipts from the consumers shall constitute Non-Tariff income of the Licensee: Provided that income arising from investment of shareholder's funds, if any, shall not be included in Non Tariff Income subject to prudence check of requisite detailed information submitted by the Licensee to the Commission."*

In accordance with the aforesaid regulations, the Petitioner has computed the Non-Tariff Income for FY 2016-17.

h) Income from Open Access:

Actual income from Open Access has been considered for computation of revenue (gap)/ surplus.

Accordingly the Petitioner has computed the ARR and Revenue for FY 2016-17 which is discussed in detail in subsequent sections.

3.1.13 The Petitioner prays for an expeditious true-up of the financials of the Petitioner for FY 2016-17.

### 3.2 Energy Sales

3.2.1 The actual energy sales during FY 2016-17 was 6114.8 MU including sales on account of enforcement as explained in para 3.2.5 below.

3.2.2 It is submitted that Regulation-4.21 of the MYT Regulations 2011 refers to “sales” as “uncontrollable” and therefore casts a mandatory exercise of function on this Hon’ble Commission to carry out the true-up of the variation in the revenue and expenditure on account thereof. The quantum of energy sales is not within the control of the licensee and therefore any variation thereto ought to be allowed by the Hon’ble Commission.

3.2.3 The category-wise monthly bifurcation of energy sales during FY 2016-17 is tabulated below:

**Table 3.1a: Category-wise monthly bifurcation of energy sales during FY 2016-17 (MU)**

S.No	Category	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
<b>A</b>	<b>Domestic</b>	<b>237</b>	<b>346</b>	<b>413</b>	<b>432</b>	<b>385</b>	<b>388</b>	<b>351</b>	<b>241</b>	<b>171</b>	<b>186</b>	<b>184</b>	<b>184</b>	<b>3,517</b>
A.1	Domestic other than A2, A3 & A4	230	336	401	419	372	375	339	232	166	180	177	178	3,405
A.2	Single Delivery Point on 11 KV CGHS	1	2	2	2	2	2	2	1	1	1	1	1	17
A.3	11 KV Worship/Hospital	4	6	8	9	8	8	8	6	4	4	5	4	75
A.4	DVB Staff	1	2	2	2	2	2	2	1	1	1	1	1	20
<b>B</b>	<b>Non Domestic</b>	<b>129</b>	<b>164</b>	<b>184</b>	<b>191</b>	<b>181</b>	<b>184</b>	<b>174</b>	<b>146</b>	<b>102</b>	<b>103</b>	<b>106</b>	<b>110</b>	<b>1,772</b>
B.1	Non Domestic Low Tension (NDLT)	103	131	146	152	142	146	138	114	78	80	84	89	1,405
B.2	Non Domestic High Tension (NDHT)	26	32	38	39	39	38	36	31	24	22	23	21	367
<b>C</b>	<b>Industrial</b>	<b>22</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>26</b>	<b>25</b>	<b>26</b>	<b>24</b>	<b>16</b>	<b>18</b>	<b>21</b>	<b>21</b>	<b>277</b>
C.1	Small Industrial Power (SIP)	20	22	23	23	22	22	23	21	13	16	18	19	241
C.2	Large Industrial	3	3	3	4	4	3	3	3	2	2	3	2	35

S.No	Category	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
	Power (LIP)													
D	Agriculture	0	0	0	0	0	0	0	0	0	0	0	0	0
E	Mushroom Cultivation	0	0	0	0	0	0	0	0	0	0	0	0	0
F	Public Lighting	8	7	8	8	9	10	9	10	13	14	17	33	145
F.1	Public Lighting (Metered)	7	5	6	6	8	8	7	9	8	9	10	7	89
F.2	Public Lighting (Un-Metered)	2	1	2	2	2	2	2	1	6	5	7	26	56
G	Delhi Jal Board (DJB)	12	11	12	12	12	13	12	12	12	12	12	11	142
G.1	DJB Supply at LT	1	1	1	1	1	1	1	1	1	1	1	1	11
G.2	DJB Supply at 11 Kv & above	11	11	11	11	11	12	11	11	11	11	11	10	131
H	DIAL													-
I	Railway Traction													-
J	DMRC	14	16	19	20	17	16	16	14	12	12	13	7	177
K	Temporary Supply	3	4	5	5	5	4	5	4	3	3	3	3	46
L	Advertisement & Hoardings	0	0	0	0	0	0	0	0	0	0	0	0	1
M	Self consumption	1	1	1	1	1	1	1	1	1	1	1	5	16
N	Enforcement	1	2	2	2	2	2	2	1	2	3	2	3	23
O	Net Metering Connection												0	0
Total		427	575	668	697	639	642	594	454	332	353	358	376	6,115

3.2.4 Enforcement Sale: This includes energy sold to consumers/persons booked under sections 126 and/or section 135 of the 2003 Act for indulging in theft of electricity. In its order dated August 26, 2011 in the true-up for FY 2008-09 and FY 2009-10 and ARR for FY 2011-12 the Hon'ble Commission had reduced the MUs in relation to enforcement sale by dividing the enforcement collection by twice the average billing rate instead of single ABR. The approach adopted by the Hon'ble Commission in its said order dated August 26, 2011 was upheld by the Hon'ble ATE in Judgment dated November 28, 2014 (Appeal No. 61 and 62 of 2012) inter-alia as under:

*"58. In view of the above discussions the issue is decided as under:*

...

2) The Commission has adopted correct approach for computing MUS on account of enforcement

..."

The Petitioner has preferred a statutory appeal before the Hon'ble Supreme Court from the aforesaid Judgment of the Hon'ble ATE dated November 28, 2014. Without pre-judice to its aforesaid Appeal, and without admitting or waiving any of its contentions against the said Judgment dated November 28, 2014 or the Hon'ble Commission's order dated August 26, 2011 insofar as the decision on enforcement sales are concerned, the Petitioner has computed the revenue billed considering the amount collected/ revenue realized during each month of the year on account of enforcement divided by twice Average Billing Rate (ABR) of rest categories observed during the year. The computation is shown in the table below:

**Table 3.1b: Enforcement Units considered for Truing-up during FY 2016-17**

S.No	Particulars	Formula	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
A	Total Units Billed excl. enforcement (MU)	A	426	573	667	696	636	640	592	452	330	349	357	374	6,092
B	Total Amount Billed excl. enforcement *(Rs. Cr)	B	309	409	480	501	457	459	425	329	243	255	262	259	4,388
C	ABR* (Rs./KWh)	$C = B/A * 10$	7.3	7.1	7.2	7.2	7.2	7.2	7.2	7.3	7.4	7.3	7.3	6.9	
D	Twice of average billing rate (Rs./ Kwh)	$D = C * 2$	15	14	14	14	14	14	14	15	15	15	15	14	
E	Enforcement Collected* (Rs. Cr)	E	1.6	2.4	2.2	2.2	2.9	2.7	2.3	2.2	2.8	5.0	2.5	4.1	33
F	Units Billed on account of enforcement	$F = E / D * 10$	1.1	1.7	1.5	1.5	2.1	1.9	1.6	1.5	1.9	3.5	1.7	2.9	23

\*Net of Non energy, E-tax, LPSC and RA surcharge

3.2.5 Own Consumption: This includes energy sales towards self-consumption of the Petitioner in its establishment i.e. its offices, call centres, sub-stations, etc. There is a mandatory direction by the Hon'ble APTEL in its judgment dated March 2, 2015 to inter alia arrive at the quantum of self-consumption based on the actual figure. The Hon'ble ATE in Judgment

dated March 2, 2015 (Appeal No. 178 of 2012) ruled as under:

*“25.5 This issue has also been dealt by us in Appeal no. 195 of 2013 filed by a consumer and the Tribunal decided as under:*

*“We feel that the Appellant should have installed meters for self consumption in all its offices, call centres, sub-stations, etc. The Respondent no.2 does not need specific instructions for the same. When the Respondent no.2 is including self consumption in its energy sale figures, then it was legally bound to supply electricity for gross consumption only through correct meters. We feel that the State Commission should have allowed self consumption only to the extent of actual consumption for metered installations. The formula proposed by the Respondent no. 2 for calculating own consumption in its installations is for calculating energy consumption for consumers in case of faulty meters. Accordingly, we direct the State Commission to re-determine the self consumption based on the metered data only. We also do not feel that this would result in change in procedure in true up with respect to the MYT order dated 23.02.2008. In the MYT order the consumption is based on the projections. In the MYT order the State Commission has not approved that the self consumption would not be metered and would only be assessed by a formula considering the load, number of days/hours, load factor, etc.”*

As per the aforesaid Judgment dated March 2, 2015 (Appeal 178 of 2012), the Hon’ble ATE has directed the Hon’ble Commission to allow the actual self-consumption on metered basis and not apply any formula for computation of self-consumption. Accordingly, the units billed in the Petitioner’s own office buildings during FY 2016-17 is 15.56 MU.

- 3.2.6 Based on the above submissions, the category-wise energy sale during FY 2016-17 is tabulated below:

**Table 3.1: Category-wise energy sales during FY 2016-17 (MU)**

S. No	Category	Actuals	Remarks/ Reference
<b>A</b>	<b>Domestic</b>	<b>3,517</b>	<b>A=i+ii</b>
I	Domestic -other than A (ii)	3,500	Form R3a
ii	Single Delivery Point on 11 KV CGHS	17	Form R3a
<b>B</b>	<b>Non Domestic</b>	<b>1,772</b>	<b>B=i+ii</b>
i	Non Domestic Low Tension (NDLT)	1,405	Form R3a

S. No	Category	Actuals	Remarks/ Reference
ii	Non Domestic High Tension (NDHT)	367	Form R3a
<b>C</b>	<b>Industrial</b>	<b>277</b>	<b>C=i+ii+iii</b>
i	Small Industrial Power (SIP)	241	Form R3a
ii	Industrial Power on 11kV SPD for Group of SIP Consumers	-	Form R3a
iii	Large Industrial Power (LIP)	35	Form R3a
<b>D</b>	<b>Agriculture</b>	<b>0</b>	Form R3a
<b>E</b>	<b>Mushroom Cultivation</b>	<b>0</b>	Form R3a
<b>F</b>	<b>Public Lighting</b>	<b>145</b>	<b>F=i+ii</b>
i	Metered	89	Form R3a
ii	Unmetered	56	Form R3a
<b>G</b>	<b>Delhi Jal Board (DJB)</b>	<b>142</b>	<b>G=i+ii</b>
i	DJB-Supply at LT	11	Form R3a
ii	DJB (Supply at 11 KV and above)	131	Form R3a
<b>H</b>	<b>Delhi International Airport Limited (DIAL)</b>		Form R3a
<b>I</b>	<b>Railway Traction</b>		Form R3a
<b>J</b>	<b>DMRC</b>	<b>177</b>	Form R3a
<b>K</b>	<b>Advertisement and Hoardings</b>	<b>1</b>	Form R3a
<b>L</b>	<b>Temporary Supply</b>	<b>46</b>	Form R3a
<b>M</b>	<b>Others</b>	<b>39</b>	<b>M=i+ii</b>
i	Enforcement	23	Form R3a
ii	Self-consumption	16	Form R3a
iii	Net metering	0	<b>Sum A to M</b>
<b>N</b>	<b>Total Energy Sales</b>	<b>6,115</b>	<b>Sum A to M</b>

In view of the above, it is prayed that the Hon'ble Commission may kindly approve the energy sales to various consumer categories as submitted in the above table while truing-up the uncontrollable costs for FY 2016-17.

### 3.3 AT&C Loss for FY 2016-17

- 3.3.1. As discussed in Para 3.1 above, since FY 2016-17 is already completed and the Hon'ble Commission has not set any AT&C Loss target to be achieved by the Petitioner in the beginning of financial year. However, if at all the loss targets for FY 16-17 are to be determined the same can only be done based on the actual performance already recognised by the Hon'ble Commission during the previous year i.e. FY 2015-16. Accordingly, the Petitioner has proposed the AT&C loss targets for FY 2016-17 as below:



Table 3.2a: AT&amp;C loss Target for FY 2016-17 (%)

S. No.	Particulars	AT&C loss	Remarks
A	Actual AT&C loss for FY 2015-16 (Trued-up in T.O. dated 31.08.2017)	15.96%	
B	y-o-y reduction approved in MYT Order dated 13.07.2012	1.17%	
C	AT&C loss target for FY 2016-17	14.79%	A-B

- 3.3.2. It is noteworthy that the Hon'ble Commission (as stated in the Statement of Reasons) in the Business Plan Regulations, 2017 has fixed the Distribution loss targets for the next Control Period i.e. FY 2017-18 to FY 2019-20 based on the actual past performance of the Petitioner upto FY 2015-16 with equal percentage reduction of 10% for each year from the target/actual of the previous years. Accordingly, if the loss targets for FY 2016-17 are computed backward from the target approved for FY 2017-18 i.e. 13%, the distribution loss target for FY 2016-17 alternatively can be 14.46%  $[13\%/(1-10\%)]$  and AT&C loss target to be 14.88%  $[1-(1-14.46\%)*99.50]$ .
- 3.3.3. The Petitioner has achieved the actual AT&C Loss level of 12.70% during FY 2016-17 as summarised below:

Table 3.2: AT&amp;C Loss for FY 2016-17 (%)

S. No	Particulars	Proposed Target	Actual Achieved
1	AT&C Loss Target	14.79%	12.70%

- 3.3.4. The Petitioner has billed Gross amount of Rs. 4976.9 Crore during FY 2016-17 which includes amount on account of Electricity Tax, LPSC and 8% RA Surcharge. The Amount Billed considered for the purpose of computation of AT&C losses during FY 2016-17 is tabulated below:

Table 3.3: Revenue Billed for AT&amp;C Loss True-up for FY 2016-17 (Rs. Crore)

S.No	Particulars	Amount True Up for FY 2016-17	Reference
A	Total Revenue Billed	4976.9	Note 58 of the Audited Accounts
B	Less: Electricity Tax Billed	203.0	Note 58 of the Audited Accounts
C	Less: 8% RA surcharge Billed	352.9	Note 58 of the Audited Accounts
E	Revenue Billed for AT&C True up	4421.0	A-B-C

- 3.3.5. The Petitioner has collected the Gross revenue of Rs. 5009.9 Crore during FY 2016-17 which includes collection on account of Electricity Tax, LPSC and 8% RA Surcharge. The Amount Collected considered for the purpose of computation of AT&C losses during FY 2016-17 is tabulated below:

**Table 3.4: Revenue Collected for AT&C Loss True-up for FY 2016-17 (Rs. Crore)**

S.No	Particulars	Amount True Up for FY 2016-17	Reference
A	Total Revenue Collected	5009.9	Notes 58 of Audited accounts
B	Less: LPSC	19.2	Notes 58 of Audited accounts
C	Less: Electricity Duty	203.5	Notes 58 of Audited accounts
D	Less: 8% RA Surcharge	351.5	Notes 58 of Audited accounts
E	<b>Revenue Collected for AT&amp;C True up</b>	<b>4435.7</b>	A-B-C-D

- 3.3.6. Accordingly, the computation of AT&C Loss for FY 2016-17 is tabulated below:

**Table 3.5: Computation of AT&C Loss for FY 2016-17**

S.No	Particulars	UoM	Amount	Remarks/ Reference
A	Energy Input	MU	7,027.7	Table 3.8
B	Energy Billed	MU	6,114.8	Table 3.1a
C	Amount Billed	Rs. Cr	4,421.0	Table 3.3
D	Average Billing Rate	Rs. Kwh	7.23	$D = C / B * 10$
E	Distribution Loss	%	12.99%	$E = (A-B) / A$
F	Amount Collected	Rs. Cr	4,435.7	Table 3.4
G	Collection efficiency	%	100.33%	$G = F / C$
H	Units Realized	MU	6,135	$H = G * B$
I	AT&C Loss Level	%	12.70%	$I = (A-H) / A$

- 3.3.7. Based on the proposed AT&C Loss Target for FY 2016-17, the Petitioner has computed the impact of overachievement in AT&C loss in terms of additional return as provided in the MYT Regulations 2011. The same is tabulated below:

**Table 3.6: Impact of overachievement in AT&C loss target for FY 2016-17**

S.No	Particulars	Submission	Remarks/ Reference
A	AT&C Loss- Proposed Target for current Year (%)	14.79%	Table 3.1
B	AT&C Loss- Revised Target for previous Year (%)	15.55%	Table 3.17ao
C	AT&C loss achieved the year (%)	12.70%	Table 3.5
D	Additional Return on Equity (%)	2.75%	(A-C)/(B-A)

### 3.4 Power Purchase Quantum

3.4.1 The Petitioner purchases almost 90% of the power from generating companies owned and/ or fully controlled by the Central Government and State Government by virtue of long term power purchase agreements which have been inherited from DTL (initially signed by M/s DTL).

3.4.2 The Petitioner has already submitted the monthly invoices raised by Generating companies with respect to various generating stations for the period April 2016 to March 2017 vide various letters listed as under:

**Table 3.8a: Correspondences with DERC regarding power purchase cost**

S.No.	Month	Letter Ref. no.	Submission Date
1	Apr-16	RA/BYPL/2016-17/42	25.05.2016
2	May-16	RA/BYPL/2016-17/79	23.06.2016
3	Jun-16	RA/BYPL/2016-17/123	22.07.2016
4	Jul-16	RA/BYPL/2016-17/150	24.08.2016
5	Aug-16	RA/BYPL/2016-17/177	26.09.2016
6	Sep-16	RA/BYPL/2016-17/197	08.11.2016
7	Oct-16	RA/BYPL/2016-17/219	23.11.2016
8	Nov-16	RA/BYPL/2016-17/248	27.12.2016
9	Dec-16	RA/BYPL/2016-17/279	21.01.2017
10	Jan-17	RA/BYPL/2016-17/308	28.02.2017
11	Feb-17	RA/BYPL/2016-17/320	28.03.2017
12	Mar-17	RA/BYPL/2017-18/119	27.08.2017

3.4.3 The Petitioner vide its letter no. RA/BYPL/2017-18/84 dated July 28, 2017 has also submitted the Power Purchase Statement for the period from April 2016 to March 2017 duly certified by the Statutory Auditor. All the PPAs were also submitted to the Hon'ble Commission vide letters dated June 20, 2016 and December 30, 2016.

- 3.4.4 The summary of actual power purchase quantum procured by the Petitioner during FY 2016-17 is as follows:

**Table 3.8: Power Purchase Quantum for FY 2016-17 (MU)**

S. No	Particulars	Submission	Remarks/ Ref.
A	Power Purchase:		
i	Gross Power Purchase Quantum	8129.4	
ii	Power sold to other sources	767.6	
iii	<b>Net Power Purchase</b>	<b>7361.8</b>	<b>i-ii</b>
B	Transmission Loss:		
i	Inter-State Transmission Loss	334.1	
ii	Intra-State Transmission Loss		
iii	<b>Total transmission loss</b>	<b>334.1</b>	
C	<b>Net power available after Transmission Loss*</b>	<b>7027.7</b>	<b>A-B</b>

\*Excluding Open Access

The Petitioner has enclosed the details of Discom-wise energy input for FY FY 2016-17 as per SLDC email dated July 05, 2017 as **Annexure-1**.

#### Short term power Purchase

- 3.4.5 During FY 2016-17, the Petitioner has procured total of 729.8 MUs through Bilateral/Banking/Intrastate/UI under short term purchase.
- 3.4.6 The summary of source-wise details of short term power purchase is tabulated below:

**Table 3.9: Details of Short Term Power Purchase**

S. No	Particulars	FY 2014-15		FY 2015-16		FY 2016-17	
		Energy	(%)	Energy	(%)	Energy	(%)
		(MU)		(MU)		(MU)	
A	Bilateral	100.0	9%	90.4	12%	46.6	6%
B	Banking	631.6	55%	468.9	64%	534.4	73%
C	Exchange	274.1	24%	32.6	4%	51.1	7%
D	Intra-State	6.1	1%	12.4	2%	37.7	5%
E	UI	132.9	12%	125.0	17%	60.0	8%
F	<b>Total</b>	<b>1144.6</b>		<b>729.4</b>		<b>729.8</b>	

As regards short term power purchase, the Hon'ble Commission in Tariff Order dated July 23, 2014 advised the Petitioner that *"in case of excess demand the Petitioner may first utilise the quantum of Banked Energy and in case of further shortage they may purchase from Bilateral/ Exchange etc. so as to keep the short term power purchase cost at minimum level."*

Accordingly, the Petitioner purchased about 80% of short term energy through Banking and Exchange. The banking transactions do not involve any cost. Similarly the prices at exchange are market discovered prices and are determined on a transparent mechanism. Further the rates of exchange has shown downward trend and has reached at par with the rates in bilateral mode.

#### Short term power Sales

3.4.7 During FY 2016-17, the Petitioner has sold total of 767.6 MUs under short term sale through Bilateral/Banking/Intrastate/UI mode. The source-wise details of sale of surplus power is tabulated below:

**Table 3.10: Details of Short Term Power Sales**

S. No	Particulars	FY 2014-15		FY 2015-16		FY 2016-17	
		Energy (MU)	(%)	Energy (MU)	(%)	Energy (MU)	(%)
A	Bilateral	3.5	0%	201.1	18%	224.0	29%
B	Banking	778.9	74%	559.0	51%	188.0	24%
C	Exchange	95.6	9%	303.3	28%	346.8	45%
D	Intra-State	39.4	4%	1.0	0%	10.4	1%
E	UI	133.7	13%	28.4	3%	-1.7	0%
F	<b>Total</b>	<b>1051.2</b>		<b>1092.8</b>		<b>767.6</b>	

3.4.8 The total quantum purchased during FY 2016-17 and Plant wise Petitioner's share is tabulated below:

**Table 3.11: Details of Power Purchase Quantum Station wise-FY 2016-17**

S. No	Stations	Total Generation	Energy received at Delhi Periphery	Petitioner Share
		MU	MU	MU
Central Sector Generating Stations (CSGS)				
A	NTPC	*	*	
i	Anta Gas			10
ii	Auraiya Gas			10
iii	Dadri Gas			25
iv	Dadri – I			227
v	Dadri – II			969
vi	Farakka			26
vii	Kahalgaon – I			71
viii	Kahalgaon – II			255
ix	Rihand – I			142
x	Rihand – II			228

S. No	Stations	Total Generation	Energy received at Delhi Periphery	Petitioner Share
		MU	MU	MU
xi	Rihand – III			235
xii	Singrauli			511
xiii	Unchahar – I			33
xiv	Unchahar – II			73
xv	Unchahar – III			47
xvi	Aravali Jhajjar			155
	<b>Sub Total</b>			<b>3016</b>
<b>B</b>	<b>NHPC</b>			
i	BAIRASIUL P S			0
ii	SALAL P S			0
iii	CHAMERA I P S			0
iv	TANAKPUR P S			0
v	URI P S			0
vi	DHAULIGANGA PS			0
vii	CHAMERA - II PS			0
viii	DULHASTI PS			0
ix	SEWA-II			0
x	CHAMERA - III PS			0
xi	URI II			0
xii	PARBATI-III			0
	NHPC Regulation credit			0
	<b>Sub Total</b>			<b>0</b>
<b>C</b>	<b>THDC</b>			
i	Tehri HEP			0
ii	Koteshwar			0
	<b>Sub Total</b>			<b>0</b>
<b>D</b>	<b>DVC</b>			
i	Mejia Units -6 (LT-4)			163
ii	DVC Chandrapur 7 & 8 (LT-3)			507
	Mejia Units -7			726
	<b>Sub Total</b>			<b>1395</b>
<b>E</b>	<b>NPCIL</b>			
i	NAPS			82
ii	RAPP			80
	<b>Sub Total</b>			<b>163</b>
<b>F</b>	<b>SJVNL</b>			
i	Naptha-Jhakri			0

S. No	Stations	Total Generation	Energy received at Delhi Periphery	Petitioner Share
		MU	MU	MU
	SJVNL-Credit			0
	Sub Total			0
G	Others			
i	Tala HEP			25
ii	Sasan UMPP			1769
	Sub Total			1793
H	Total CSGS			6367
Delhi Generating Stations				
i	BTPS	*	*	295
ii	Rajghat			0
iii	Gas Turbine			56
iv	Pragati - I			297
v	Pragati -III, BAWANA			332
	Sub Total			981
Renewables				
i	SECI			44
ii	EDWPCL			8
J	Grand Total			7400

\*Total generation and energy received at Delhi periphery is to be received from SLDC.

3.4.9 In view of the above, it is prayed that the Hon'ble Commission may kindly consider the actual gross power purchase quantum of 7400 MU during FY 2016-17 as submitted in the above table.

### 3.5 Power Purchase Cost

#### a) Long Term Power Purchase:

3.5.1 The power purchase cost is based on the Tariff determined by the appropriate Commission under section 62(1)(a) of the 2003 Act for the supply of electricity from generating companies to distribution licensees. Accordingly, when the generating company is owned and/or controlled by the Central Govt. or is supplying to more than one State, it is the CERC which determines the tariff. In all other cases, it is the DERC which determines the tariff of the generating companies owned and/or controlled by the State Govt. As stated above, the Petitioner has already submitted the monthly invoices raised, to the Hon'ble Commission. The Petitioner has considered the total cost on account of long term sources during FY 2016-17 which includes the following:

- All Power Purchase cost including fixed cost, variable cost, arrears, other charges etc. as scheduling of power is controlled by SLDC.
- Cost incurred on account of Anta, Auraiya and Dadri Gas Stations.
- Fixed Cost paid to the Generator during FY 2016-17 on account of Regulated Power has been considered.
- Since the amount of Rs. 121.92 Crore received during FY 2016-17 on account of credit against Regulated Power has been considered by the Hon'ble Commission in truing up of FY 2014-15, the credit has not been considered in the Power Purchase cost to be trued up for FY 2016-17.

### 3.5.2 Merit Order Despatch (MOD) is controlled by SLDC:

The scheduling is being done by SLDC and DISCOMs have no control over backing-down of the costly power plants. Following points may be noted with respect to actual power purchase cost:

- SLDC has clearly intimated that scheduling of central generating stations and other inter-state generating stations is controlled by RLDC and hence DISCOM wise scheduling is not possible.
- The availability of Plants is beyond the control of Discoms and the actual availability of Plants differs from the projections. The monthly MOD submitted by the Discoms is based on past Month ECR which may not be valid on real time basis.
- Further, in line with the CERC (IEGC) 4th amendment 2016 Regulation, as quoted below:

*"The CGS or ISGS may be directed by concerned RLDC to operate its unit(s) at or above the technical minimum but below the normative plant availability factor on account of grid security or due to the fewer schedules given by the beneficiaries and it is further stated that where the CGS or ISGS, whose tariff is either determined or adopted by the Commission, is directed by the concerned RLDC to operate below normative plant availability factor but at or above technical minimum, the CGS or ISGS may be **compensated** depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by RLDC or SLDC, as the case may be....."*



*In case of coal / lignite based generating stations, following station heat rate degradation or actual heat rate, whichever is lower, shall be considered for the purpose of compensation:*

Sr. No.	Unit loading as a % of Installed Capacity of the Unit	Increase in SHR (for supercritical units) (%)	Increase in SHR (for sub-critical units) (%)
1.	85-100	Nil	Nil
2.	75-84.99	1.25	2.25
3.	65-74.99	2	4
4.	55.64.99	3	6

*Compensation for the Station Heat Rate and Auxiliary Energy Consumption shall be worked out in terms of energy charges."*

As can be inferred from above, there are multiple buyers from each generator and this part load operation will impact the MOD schedule of the buyers.

- d) Further to the above, it is submitted that Operation of Plant is not under the control of Discoms, and Delhi Discoms allocation is around 10%-30% in significant number of Plants. Since allocation of these Plants are on shared basis and operation of the same is on the basis of aggregation of demand and keeping into account the Grid Security, therefore, the decision of actual operation/availability of plant is not under control of the DISCOMs.
- e) And, there are various instances where forced Scheduling is done to maintain Grid security.

It is respectfully submitted that considering the above facts, it will be entirely unjustified if power purchase cost is to be reduced on account of Merit Order Despatch, not for any reason attributable to the Petitioner as MOD is the statutory function of the SLDC.

### 3.5.3 Cost incurred on account of purchase from Anta, Auraiya and Dadri Gas stations during FY 2016-17:

The Hon'ble Commission in Tariff Order dated September 29, 2015 as well as in the PPAC order dated June 12, 2015 decided to disallow cost incurred on account of Anta, Auraiya and Dadri Gas stations stating that the Petitioner has not taken prior approval from the Hon'ble Commission.

The Petitioner in its Petition for Truing-up of FY 2014-15, Review of FY 2015-16, Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff for FY 2016-17 submitted various reasons as to why the cost incurred on account of purchase from Anta, Auraiya and Dadri Gas Stations ought to be allowed. The relevant extracts are given as under:

*"The Petitioner has also preferred appeals against the disallowance of the aforesaid power purchase cost from Anta, Auriya and Dadri stations in the Tariff Order dated September 29, 2015.*

*The aforesaid Appeal (against the disallowance of the aforesaid power purchase cost from Anta, Auriya and Dadri stations in the Tariff Order dated September 29, 2015) has been preferred inter-alia on account of the following grounds:*

- a) The Hon'ble Commission has treated two equals unequally in as much as it has allowed the extended PPA with respect to Singrauli to be continued, whereas the PPAs with respect to Anta, Auriya and Dadri have not been continued. It is submitted that all the four PPAs were in fact executed on the very same terms as the Consolidated PPA entered into between the Petitioner and NTPC. The only difference between the PPAs was for the term of the power project/ power station which differed depending on the nature of the project. However, this difference does not provide intelligible differentia to treat the PPAs any differently from each other, given the fact that they were extended on the same terms as the original PPA. Hence, the disallowance of cost of power purchase of Anta, Auriya and Dadri PPAs and its pass through is discriminating besides being unsustainable in law.*

*The Anta, Auriya and Dadri PPAs are PPAs with respect to central generating stations which have their tariffs determined in accordance with law by the Central Electricity Regulatory Commission (CERC), which determines the same in terms of the CERC Regulations applicable to these plants. Hence, the fact that Singrauli has a lower power purchase cost does not in any way make Singrauli open to a different treatment when it has the very same terms as the Anta, Auriya and Dadri PPAs and also has its tariffs determined by the CERC pursuant to the CERC Regulations. Accordingly, it is not possible for the Hon'ble Commission to distinguish and/or discriminate between the Anta, Auriya and Dadri PPAs and the Singrauli PPA on the basis of cost either as in all PPAs the cost is determined purely as per the CERC Regulations and which regulations have governed such PPAs right from their inception and continues to apply even till date.*

*It is further submitted that the only difference between the Singrauli and the other three PPAs is on account of the fact that the former is a coal fired station, whereas the latter are gas fired stations. On account of the shortage of gas, these stations have seen an increase in cost under the new CERC Regulations,*

applicable from 2015 onwards. Accordingly, the Petitioner had with respect to the Anta, Auriya and Dadri power plants, given their higher cost, represented to the Hon'ble Commission to surrender these PPAs. However, these letters have not been correctly interpreted or applied with the result that there has been an unjustified disallowance of the power procurement cost.

- b) The Hon'ble Commission has in its Orders dated July 12, 2015 and September 29, 2015 disallowed power purchase cost during the truing up for past years. During the said years, the Petitioner had incurred the power purchase cost, as per the terms of the tariff orders dated July 13, 2012, July 31, 2013 and July 23, 2014 applicable to those years, which had permitted power purchase from these plants. Hence, the Petitioner had procured power from Anta, Auraiya and Dadri in accordance with this Hon'ble Commission's Orders. It had purchased power in accordance with the terms of the PPAs, which had not been objected to and in fact accepted during the assignment/reassignment of PPAs in the past by the Hon'ble Commission and as per the tariff determined by CERC. Therefore, now the Hon'ble Commission is estopped from withdrawing the purchase permitted in its past tariff orders, which have attained finality on this issue.
- c) The disallowance is all the more egregious and unsustainable as the same has been done in truing up. The basis of incurring such costs by the Petitioner was the tariff orders which allowed the Petitioner to purchase power from these power stations during the years in which the tariff orders, which are being trued up, were passed.
- d) The Hon'ble Commission erred in proceeding upon the applicability of Clause 5.2 of the License condition. It is submitted that the Hon'ble Commission has proceeded on the basis that the Supplementary PPA with NTPC in respect of Anta, Auriya and Dadri required the prior approval of the Hon'ble Commission which had not been done. The said premise is entirely misplaced inter alia since:
- Clause 5.1 of the License Condition permitted the licensee to procure, purchase or import electricity from such sources and persons with whom the licensee had arrangement or agreement for purchase of power as on the date of coming into force of the Transfer Scheme, in accordance with the terms and conditions of such agreement or arrangement. Clause 5.1 reads as under:-

*“5.1 The Licensee shall be entitled to purchase, import or otherwise acquire electricity from such sources and persons with whom the Licensee had agreements or arrangements of power purchase or procurement of energy as on the date of the coming into force of the Transfer Scheme, in accordance with the terms and conditions of such agreement and arrangement.”*

- *July 1, 2002 was the effective date of the Transfer Scheme. The Transfer Scheme dated November 20, 2001, (as amended on June 26, 2002) inter alia mandated that the distribution undertaking comprising of all assets, liabilities and proceedings concerning distribution consisting of “... contract, rights, deeds, schemes, bonds, agreements, and other instruments of whatever nature”.*
- *Clause 5(2) of the Transfer Scheme inter alia provides that on such transfer and vesting of the undertakings in terms of sub-rule 1 the respective transferee shall be responsible for all contracts, rights, deeds, schemes, agreements, and other instruments of whatever nature relating to the respective undertaking and as such liability transfer to it to which the Board is a party or having effect on the date of the transfer. This was to be in the same manner as the Board was liable before the date of the transfer and the same shall be in force and effect against, or in favour of the respective transferee and may be enforced as if the respective transferee had been a party thereto instead of the Board. The said Clause 5(2) of the Transfer Scheme reads as follows:*  
*“5 (2) On such transfer and vesting of the undertakings in terms of sub-rule (1), the respective transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature relating to the respective undertaking and assets and liabilities transferred to it, to which the Board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favour of the respective transferee and may be enforced effectively as if the respective transferee had been a party thereto instead of the Board.”*
- *In the circumstances, the rights of the erstwhile DVB existing in the power purchase agreement between NTPC and DVB stood transmitted to the benefit of, by operation of law in favour of the Petitioner as on the date of the Transfer Scheme.*

2002.

- *In light of this matter, Clause 5.1 of License Condition (extracted above) is completely satisfied and there was no occasion for the Petitioner to take any approval from the Hon'ble Commission for power purchase agreement or arrangement which enures to the benefit of the Petitioner as on the transfer date. The only pre-condition is that the terms and conditions must continue to be the same. A bare perusal of the Supplementary PPA in respect of Anta, Auriya and Dadri will show that the terms and conditions subsisting as on July 1, 2002 have been continued. Therefore, there is absolutely no warrant for the Hon'ble Commission to proceed on the basis that the entering into supplementary PPA was required to be with the prior approval of the Hon'ble Commission. In fact, not only was any prior approval required, no approval at all was required.*
  - *Without prejudice to all the above, even if it were assumed for the purpose of argument the PPAs vest in DTL as on July 1, 2002 (and not with the DISCOM), in terms of (1) clause 12.1 of the Bulk Supply Agreement read with the re-assignment order of the Hon'ble Commission dated March 31, 2007, all the terms and conditions, with rights and obligations standing as on July 1, 2002 stood transferred to the Petitioner, as if the transfer actually took place with effect from July 1, 2002.*
  - *Hence, in whichever view of the matter, the Hon'ble Commission's fundamental premise that clause 5.2.a. of the License Condition applying to the instant issue is factually not correct and legally untenable. The Hon'ble Commission has completely ignored the clause 5.1 of the License Condition.*
- e) *The Hon'ble Commission has completely overlooked the fact that when the Supplementary PPA was entered into on March 29, 2012, the prevailing tariff of these three generating stations in terms of the prevailing CERC Order with respect to Anta, Auriya and Dadri were Rs. 2.58/kWh, Rs. 2.63/kWh and Rs. 2.64/kWh, respectively. Hence there was no question of any so-called cost benefits analysis at the time when the PPA was extended. It is only in 2015 that the tariff of these three stations has been determined as Rs. 3.40/kWh, Rs. 4.14/kWh and Rs. 4.02/kWh, respectively. It is only at this time that they have become far more expensive than the Petitioner's average cost of power procurement.*
- f) *The Hon'ble Commission passed an Order dated February 27, 2014*

*in the matter of 'Review of Reassignment order dated 31.03.2007 passed by the Hon'ble Commission of Power Purchase Agreement to the Distribution Licensees in National Capital Territory of Delhi', and taking into account that the consumption has now changed due to change in consumer mix, reassigned PPAs among Delhi Distribution Licensees (including the Petitioner) as per current average energy drawn. The said Order dated February 27, 2014 states as under:*

*"Keeping in mind the public interest the Hon'ble Commission has decided to reallocate the PPAs among BRPL, BYPL & TPDDL on the basis of average energy drawl for the period FY 2007-08 to 2011-12.....The Commission directs that the reassignment of PPAs shall be made effective from 1st April 2014. This order will remain in force till amended or modified by the Commission."*

- g) The Hon'ble Commission having, by its Order dated February 27, 2014, re-assigning and reallocating the PPAs among the Petitioner, BYPL & TPDDL on the basis of average energy drawl for the period FY 2007-08 to 2011-12, made effective from 1st April 2014, which included the power drawn from Dadri, Auriya and Anta could have not have disallowed the power purchase costs of Anta, Auriya and Dadri Gas Plants.*
- h) While disallowing the power purchase cost, the Hon'ble Commission did not consider the fact that in the various earlier Tariff Orders dated July 13, 2012, July 31, 2013, and July 23, 2014, the Hon'ble Commission had allowed the power purchase cost and the variation pertaining to the said Anta, Auriya and Dadri Gas Power Stations ostensibly on the basis that it was the order of the Hon'ble Commission dated March 31, 2007 in terms whereof the power allocation from the aforesaid power stations were made in favour of the Petitioner. Hence, having approved the power purchase costs from the said power plants in the Tariff Orders for FY 12-13 to FY 14-15, the said Supplementary PPA was deemed to have been approved by the Hon'ble Commission.*
- i) It is submitted that since section 86(1)(b) of the EA, 2003 does not provide for a "prior approval" to be obtained from the Hon'ble Commission, the disallowance of power purchase cost and related generation (MU) from Anta Gas Power Station, Auraiya Gas Power Station, and Dadri Gas Power Station, on the ground that the Petitioner was scheduling power from these Stations without prior approval of the Hon'ble Commission, is erroneous.*
- j) Without prejudice to the above, even as per the licence conditions, procurement of power by the Petitioner is subject to the "general"*



*OR “special” approval by the Hon’ble Commission. The mere fact that the Hon’ble Commission has consciously been assigning, re-assigning, approving the power-purchase cost from the said three plants clearly constitutes, at the very least, “general” approval by the Hon’ble Commission. Further, neither was the assignment, reassignment or approval of power purchase cost conditional nor the Hon’ble Commission has stated in Tariff Order dated September 29, 2015 as to which clause of the PPA pertaining to Anta, Auriya and Dadri gas plants does not meet with the Hon’ble Commission’s approval.”*

However the Hon’ble Commission instead of dealing with the aforesaid contentions relied upon Hon’ble Tribunal’s Judgment dated June 1, 2016 in Appeal No. 186 and 196 of 2015 which was in fact the Judgment in PPAC Appeal and not against the Appeal filed before Hon’ble ATE in Tariff Order dated September 29, 2015 in which the aforesaid disallowances were made.

Further, the Petitioner has preferred a Civil Appeal before the Hon’ble Supreme Court, being CA No. 11106-07 of 2016 against the aforesaid ATE judgment which is admitted vide order dated 18.11.2016.

The Petitioner also filed Petition bearing No. 301 MP 2015 before the Hon’ble CERC for seeking inter alia the discharge of its obligations under the PPA with NTPC Limited for procurement of power from Anta, Auriya and Dadri stations, owing to the disallowance of the power procurement by this Hon’ble Commission. The said Petition has been dismissed by the Hon’ble CERC vide order dated April 17, 2017. Further, the Petitioner has preferred an Appeal before the Hon’ble ATE against the said order dated 17.4.2017 of the CERC whereunder the aforesaid petition of the petitioner stood dismissed.

Pending the same, the Petitioner has also represented before NTPC that PPA is not valid as per the observations of the Hon’ble Commission in Tariff Order dated September 29, 2015. Hence no power shall be procured from these power stations. However, NTPC holds the ground that it is a composite PPA and DISCOMs have to purchase power from these Stations unless otherwise MOP reallocates the same. Also NRLDC is scheduling power from Anta, Auriya and Dadri for which the DISCOMs does not have any control.

Accordingly, the Petitioner prays that the actual power purchase cost for

the power procured from the aforesaid power plants may kindly be allowed.

#### 3.5.4 Regulated Power:

This section pertains to the cost paid by the Petitioner to the generating companies which have discontinued power supply to the Petitioner on account of non-payment of dues, and have further more diverted the power supply to some other beneficiary, in accordance with the CERC (Regulation of Power Supply) Regulations, 2010. This is called Regulated Power.

Generators selling power to the Petitioner have cut off power supply on account of non-payment of the power bills as per CERC (Regulation of Power Supply) Regulations, 2010. Such non-payment is exclusively on account of the insufficient tariff determination, non-implementation of Hon'ble Tribunal's judgments and creation of large Regulatory Assets by the Hon'ble Commission. As a contractual and statutory requirement, when such generators stop supplying power to the Petitioner, it is still obliged to pay the fixed / capacity charges to such generators.

The Hon'ble Commission in Tariff Order dated July 23, 2014 directed the Petitioner to submit the cost-benefit analysis of regulated power during FY 2012-13 as under:

*"3.88.... Further, the Petitioner may submit within one month, claim if any alongwith relevant documents, related to loss on sale of surplus power during the off-peak hours from regulated stations that would have been otherwise imminent in case the power was not regulated.*

...

*3.90.....*

***Accordingly, the Commission obtained from SLDC the details of power drawn from other sources during regulation period and also the stations from which power regulation was done along with the quantum of power that would have been available if these was no regulation."* (Emphasis added)**

The Petitioner submitted the cost-benefit analysis for the power regulated during FY 2012-13 and FY 2013-14 vide letter dated 25.08.2014 and 28.04.2015. However the Hon'ble Commission in Tariff Order dated September 29, 2015 did not mention anything about cost-benefit analysis and deducted the cost borne on account of regulated power as under:

*"3.117 The Commission has received the claims regarding disallowance on account of regulated power in truing up of FY 2012-*



*13 in tariff order dated 23.07.2014. In Order to finalise the claim of the Petitioner, the **Commission has directed SLDC to submit the relevant information like quantum of Short Term Purchase during regulated period in case there has been no regulation of power. The said information is awaited from SLDC. The Commission will take final view on the basis of information submitted by SLDC.***” (Emphasis added)

Contrary to the aforesaid statement, the Hon’ble Commission in Tariff Order dated August 31, 2017 rejected the claim of the Petitioner opining as under:

*“3.280 The Commission has analyzed the submission of the Petitioner and it is observed that the Petitioner has not factored the merit order principle while computing the opportunity cost and benefit due to regulation of power vis-a-vis sale of surplus power. It is clarified that in case the power would not have been regulated from these cheaper station of NHPC then the Petitioner had the opportunity to back down its costly station and avail the cheaper power from NHPC, which could have reduced the loss on sale of surplus power as considered by the Petitioner.”*

The aforesaid finding of the Hon’ble Commission is true only if the Petitioner would have been able to back-down entire costly generating stations. However the Hon’ble Commission ignored the fact that the generating stations are required to be run at least at the technical minimum so as to ensure grid stability. Same has also been intimated by SLDC vide letter dated April/May 2014. The letter of SLDC has also been forwarded to the Hon’ble Commission vide letter dated June 16, 2017. Therefore even if the power would not have been regulated from this cheaper station of NHPC then also the Petitioner would not have the opportunity to back down costly station as the technical minimum would have been despatched. The aforesaid finding is denial of the fact that the consumers have actually benefitted from regulation of power.

The Petitioner cannot be made to suffer twice, the first time by insufficient tariff determination and the second by not being allowed to recover the costs of such insufficient tariff determination (actus curiae neminem gravabit). Short term procurement during the period of regulation works out to be more cost wise economical for the end consumer as has been explained by the Petitioner to the Hon’ble Commission. Furthermore, on one hand the Hon’ble Commission compels the Petitioner to maintain

24x7 power supply by not exceeding the 1% load shedding limit, whereas on the other hand it disallows short term procurement, which is directly as a consequence of the Petitioner's endeavor to adhere to these directions and supply power, despite regulation of power supply by the generators. The Petitioner is therefore faced with a double jeopardy.

The rationale of the Hon'ble Commission that such additional cost of payment of fixed charges is an additional burden on the consumer is factually incorrect. This is clear from the following:-

- (i) The Petitioner has inherited long term PPAs with several generating station at very high rate for purchase of power on Round The Clock (RTC) basis.
- (ii) By virtue of these contracts inherited from the DVB, the Petitioner is obliged to purchase power at an extremely high rate throughout the day i.e. for all 96 time blocks.
- (iii) However due to the peculiar load profile in Delhi such expensive power is not required for many of the time block in the off-peak period.
- (iv) Hence, by discontinuing such expenses of Round The Clock expensive power purchases and procuring power from short term sources only for those time blocks where the demand merit such purchases there is in fact a net saving in the Power Purchase expenses to the Petitioner. This benefit is directly available to the consumers.

In this connection it is pertinent to point out that in the Power Purchase Adjustment Cost ("PPAC") formula the Hon'ble Commission does not provide even for the recovery of such short term charges by the Petitioner. There is, hence, a double jeopardy inflicted on the Petitioner. On the one hand the Hon'ble Commission does not permit the fixed cost paid to the generating station (which has regulated power) and on the other hand the Hon'ble Commission does not permit the cost of short term purchase which has necessarily to be carried out by the Petitioner to service the needs of its consumers, in compliance with the directions of the Hon'ble Commission to maintain 24x7 power supply (in terms of the Power Directions). This is despite the clear benefit which is available to the consumers of the Petitioner as indicated above.

It is further submitted that the inability of the Petitioner to pay the Generator is only on account of the determination by the Hon'ble Commission of tariff, not allowing for full recovery of costs and its persistent refusal to implement the Judgments of this Hon'ble Tribunal.

It is further submitted that the credit received by the Petitioner against the sale of such Regulated power (by the Generators to third parties) has been considered by the Hon'ble Commission as revenue in the ARR, whereas the Hon'ble Commission omitted to consider the fixed costs incurred as a result of such regulated power without which the Petitioner could not have got the credit for the 3<sup>rd</sup> party sales of such regulated power.

Payment of fixed charges is a statutory obligation under the CERC (Terms and Conditions of Tariff) Regulations, 2010. The payment of fixed charges even when power is not drawn is inherent in the tariff determination process whereunder the annual fixed charges of a generating company are determined with reference to a normative level of PLF/ sale of power. It is therefore assumed that upon the sale of the normative quantum of power, the entire fixed charges of the generating company will be recovered. If therefore, there be any underdrawl, it is a simple contractual and statutory requirement to pay the full fixed charges as if such power were drawn. Further, the underdrawl is, more often than not, on account of the power being surplus for the requirements of the Petitioner. Even if such power were drawn, it would have to be sold either in the short term market, or in UI, both of which would result in a loss to the Petitioner. The Petitioner has clearly demonstrated hereinabove that by the underdrawl of such expensive power and procurement of smaller quantities of power from the short term market, even after the payment of the fixed charges, the Petitioner still stands to benefit in a net lower cost of procurement.

In respect of para 3.280 of the Order dated 31.8.2017, the finding that the Petitioner could have backed down its costly stations and availed cheaper power from NHPC is purely hypothetical as there was no option to back down costly stations as explained in the Petitioner's letter dated June 16, 2017.

Similarly, in respect of para 3.420 of the Order dated 31.8.2017, there arises no question of availability of regulated power or backing down of costlier plants by the Petitioner. Without prejudice, in the event the power was not regulated, it is submitted that the costly stations were running at their technical minimum limit and could not have backed down beyond that limit during the period in question, i.e. FY 2011-12 to FY 2015-16.

In respect of the finding in para 3.420 of the Order dated 31.8.2017 that *"Further, Regulation of Power cannot be treated as mechanism to optimise surplus power and meet demand by procuring power from short term market"*, it appears that the Hon'ble Commission is suggesting that the Petitioner is not required to meet the demand of the consumers, contrary to its very own Power

Directions to restrict load shedding to 1% of the total demand. The Hon'ble Commission did not notice that the Petitioner was faced with a compelling situation to meet the demand of its consumers during the period in question, on account of the regulation of power. The Petitioner therefore had no option but to procure power on short term basis to meet the demand. Optimization of surplus power is only a consequence of the Petitioner's diligent efforts in procuring power from the short term market. The Hon'ble Commission did not take into account the benefit to the consumer accruing due to reduction in the quantum of surplus power that was disposed off, by purchasing power for specific time slots for limited period through short term bilateral transactions. A detailed analysis of this cost saving has been provided in the Petitioner's letter dated 16.06.2017.

In respect of para 3.421 of the Order dated 31.8.2017, it is submitted that the Statement of Reasons of the CERC Regulations are very clear that the responsibility of bearing the capacity charges lies with the Petitioner. Hence, the capacity charges, which were to be borne by the Petitioner as per CERC had to be allowed as a pass through.

Further, the fact has also been recognized by the Hon'ble Commission in the Tariff Order dated 31.08.2017 wherein the Hon'ble Commission has provided the fixed charges on account of Regulated Power to be allowed in future years.

Further the fixed cost paid to the Generators along with the economic procurement of power through short term is required to be considered due to the following reasons:

- i. The Petitioner is purchasing power from long term sources at RTC basis. The power available from long term sources is sold at lower rates than the average power purchase cost during off-peak hours. The loss on account of sale of surplus power being uncontrollable in nature is passed on to the consumers. By regulation of power, however, such a loss is mitigated because on the other hand when certain generating stations discontinue supply of power under the scheme of 'Regulation of Power', the Petitioner is only required to pay the fixed charges and not the energy charges. Therefore the Petitioner is actually avoiding the loss on account of sale of surplus power during off-peak hours. The same is evident from the table below:

**Table 3.12a: Cost benefit analysis of regulated power during FY 2016-17**

Particulars	FY 16-17			Remarks
	MU	Rs/Unit	Rs Cr.	

Particulars		FY 16-17			Remarks
		MU	Rs/Unit	Rs Cr.	
Cost of Regulated Quantum (NHPC, SJVNL, APCPL)	A	823	3.78	311	MU as per Draft SLDC report (to be confirmed by SLDC)
Surplus Sale from Regulated Quantum	B	725	2.44	177	MU as per SLDC less Short term exchange purchase/ minor bilateral (974-98)MU Rate as per Audit Certificate
Avoided cost	C=A-B			134	
Net Fixed Cost incurred on account of Regulated Quantum	D			50	Fixed Cost including Regulated Credit (Rs 108 Cr- Rs 57 Cr.)
Cost of Short Term Power Purchased during Regulated period	E	98	3.44	34	Short term purchase excludes Banking & UI, Rate as per Audit Certificate
Total Cost incurred on account of Regulated Quantum	F=D+E			84	
<b>Net Avoided cost by BYPL</b>	<b>G=C-F</b>			<b>50</b>	

*\*Figures are provisional subject to confirmation from SLDC.*

*The Petitioner vide letter dated 09.11.2017 sought details regarding power procured by BYPL for Regulation of Power for FY 2016-17 from SLDC.*

As evident from the aforesaid table, the Petitioner has been able to avoid cost of Rs. 50 Crore to consumers due to reduction in power purchase cost on account of regulation of power.

- ii. In terms of the Power Purchase Agreement executed by the Petitioner with various Generating Companies, the Petitioner is contractually mandated to pay fixed charges to the Generating Company even though it is the Generating Company which restricts the power supply under the mechanism of regulation of supply owing to the non-payment of its outstanding dues. Hence, on this basis the Petitioner cannot be denied the fixed charges that it has to incur towards the Generating Companies. Under section 86(1)(b) while approving procurement of power through Power Purchase Agreements, the Hon'ble Commission allows fixed charges and variable charges to be paid by the Petitioner to the Generating Companies.
- iii. The precarious financial position of the Petitioner over the past 3 - 4 years was a result of a lack of cost reflective tariff and the various Orders passed and directions issued by the Hon'ble ATE have yet not been

implemented by this Hon'ble Commission. As a result, the Petitioner has been facing severe hardship and impediments in the smooth functioning of its business. It is respectfully submitted that it is a settled principle that an act of Court shall prejudice no one.

- iv. It is further submitted that the Petitioner had made sincere efforts to comply with and honour all its commitments to the Generating and Transmission utilities. In order to do so, it is imperative that adequate revenue is generated through a cost reflective tariff to enable the Petitioner to not only meet current expenses but also to liquidate the past dues.
- v. It is a fact that the impact of past tariff orders has not, till date, resolved the cash flow constraints caused primarily due to build-up of large regulatory assets as created by the Hon'ble Commission.
- vi. The funding of these regulatory assets has been done by availing financial assistance from lenders through increased debt. Because of these reasons, payments of suppliers, generators and transmission companies had to be deferred. The reluctance of banks to increase exposure in absence of an adequate and time bound amortisation schedule for liquidation of these regulatory assets has further reduced availability of cash, which fact has also been brought to the knowledge of the Hon'ble Commission by the Petitioner in its correspondence.

In view of the above and as also explained above that there is a net benefit to the consumers of about Rs. 50 Crores, the Petitioner prays that the total actual cost incurred on account of Regulated power (fixed cost and short term) may kindly be allowed.

3.5.5 In view of the above, the details of station-wise power purchase cost during FY 2016-17 is tabulated below:

**Table 3.12: Details of Power Purchase Cost Station wise for FY 2016-17**

S. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Arrears **	Total Charges	Average Rate	Remarks/ Ref
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh	
1	2	3	4	5	6	7	8	9	10
<b>Central Sector Generating Stations (CSGS)</b>									
<b>A</b>	<b>NTPC</b>								
i	Anta Gas	9.5	5.5	2.4	0.0	0.1	8.0	8.37	
ii	Auraiya Gas	10.2	6.6	3.4	0.0	-0.2	9.9	9.63	
iii	Dadri Gas	25.2	8.7	7.0	0.0	-0.5	15.3	6.07	
iv	Dadri – I	226.8	41.3	74.9	0.1	-3.8	112.5	4.96	
v	Dadri – II	969.0	201.0	301.2	0.1	-8.6	493.7	5.09	

S. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Arrears **	Total Charges	Average Rate	Remarks/ Ref
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh	
1	2	3	4	5	6	7	8	9	10
vi	Farakka	25.6	3.0	6.4	0.0	0.6	10.0	3.91	
vii	Kahalgaoon – I	71.5	8.5	17.0	0.0	1.4	26.8	3.75	
viii	Kahalgaoon – II	255.3	31.5	58.0	0.0	-0.3	89.1	3.49	
ix	Rihand – I	141.5	13.7	22.2	0.1	2.0	38.0	2.68	
x	Rihand – II	227.5	19.6	35.3	0.0	-1.8	53.1	2.33	
xi	Rihand – III	234.7	34.2	35.8	0.0	1.4	71.3	3.04	
xii	Singrauli	511.3	29.4	72.2	0.2	10.3	112.2	2.19	
xiii	Unchahar – I	33.1	3.4	9.7	0.0	-0.2	12.9	3.90	
xiv	Unchahar – II	72.6	6.9	21.1	0.0	-0.6	27.4	3.78	
xv	Unchahar – III	47.2	6.7	13.8	0.0	0.7	21.2	4.49	
xvi	Aravali Jhajjar	154.7	92.3	50.2	0.0	4.8	147.3	9.52	
	<b>Sub Total</b>	<b>3015.8</b>	<b>512.3</b>	<b>730.5</b>	<b>0.7</b>	<b>5.1</b>	<b>1248.7</b>	<b>4.14</b>	
<b>B</b>	<b>NHPC</b>								
i	BAIRASIUL P S	0.0	0.8	0.0	0.0	0.1	0.9		
ii	SALAL P S	0.0	2.6	0.0	0.0	0.4	3.0		
iii	CHAMERA I P S	0.0	1.3	0.0	0.0	0.6	1.9		
iv	TANAKPUR P S	0.0	0.8	0.0	0.0	0.5	1.4		
v	URI P S	0.0	2.7	0.0	0.0	1.3	4.0		
vi	DHAULIGANGA PS	0.0	1.9	0.0	0.0	2.6	4.6		
vii	CHAMERA - II PS	0.0	2.2	0.0	0.0	-0.4	1.8		
viii	DULHASTI PS	0.0	6.7	0.0	0.0	-4.6	2.2		
ix	SEWA-II	0.0	0.0	0.0	0.0	0.0	0.0		
x	CHAMERA - III PS	0.0	2.9	0.0	0.0	0.0	2.9		
xi	URI II	0.0	5.3	0.0	0.0	5.4	10.6		
xii	PARBATI-III	0.0	1.9	0.0	0.0	-2.9	-1.0		
	NHPC Regulation credit	0.0	0.0	0.0	0.0	-10.1	-10.1		
	<b>Sub Total</b>	<b>0.0</b>	<b>29.1</b>	<b>0.0</b>	<b>0.1</b>	<b>-7.1</b>	<b>22.1</b>		
<b>C</b>	<b>THDC</b>								
i	Tehri HEP	0.0	0.0	0.0	0.0	0.0	0.0		
ii	Koteshwar	0.0	0.0	0.0	0.0	0.0	0.0		
	<b>Sub Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
<b>D</b>	<b>DVC</b>								
i	Mejia Units -6 (LT-4)	162.8	23.6	35.2	0.0	1.2	60.0	3.68	
ii	DVC	506.6	83.0	99.0	0.0	-0.3	181.8	3.59	

S. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Arrears **	Total Charges	Average Rate	Remarks/ Ref
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh	
1	2	3	4	5	6	7	8	9	10
	Chandrapur 7 & 8 (LT-3)								
iii	Mejia Units -7	725.8	118.1	160.3	0.0	-26.5	251.9	3.47	
iv	DVC Credit from Regulated power*	0.0	0.0	0.0	0.0	-156.4	-156.4		
	<b>Sub Total</b>	<b>1395</b>	<b>225</b>	<b>295</b>	<b>0</b>	<b>-182</b>	<b>337</b>		
<b>E</b>	<b>NPCIL</b>								
i	NAPS	82.4	0.0	19.3	1.7	0.6	21.6	2.62	
ii	RAPP	80.3	0.0	27.7	1.0	0.5	29.2	3.63	
	<b>Sub Total</b>	<b>163</b>	<b>0</b>	<b>47</b>	<b>3</b>	<b>1</b>	<b>51</b>	<b>3.12</b>	
<b>F</b>	<b>SJVNL</b>								
i	Naptha-Jhakri	0.0	26.4	0.0	0.0	0.0	26.4		
ii	SJVNL Credit	0.0	0.0	0.0	0.0	-12.0	-12.0		
	<b>Sub Total</b>	<b>0</b>	<b>26</b>	<b>0</b>	<b>0</b>	<b>-12</b>	<b>14</b>		
<b>G</b>	<b>Others</b>								
i	Tala HEP	24.7	0.0	5.0	0.0	0.0	5.0	2.03	
ii	Sasan UMPP	1768.5	27.5	198.5	60.4	-26.5	259.9	1.47	
	<b>Sub Total</b>	<b>1793</b>	<b>27</b>	<b>204</b>	<b>60</b>	<b>-27</b>	<b>265</b>	<b>1.48</b>	
<b>H</b>	<b>Total CSGS</b>	<b>6367</b>	<b>820</b>	<b>1276</b>	<b>64</b>	<b>-221</b>	<b>1938</b>	<b>3.04</b>	(A+B+C+D +E+F+G)
<b>I. Delhi Generating Stations</b>									
i	BTPS	295.0	30.6	106.5	0.0	4.8	141.9	4.81	
ii	Rajghat	0.0	0.0	0.0	0.0	0.0	0.0		
iii	Gas Turbine	56.3	16.3	16.9	0.0	0.1	33.4	5.93	
iv	Pragati - I	297.4	33.7	91.1	0.0	-0.2	124.6	4.19	
v	Pragati -III, BAWANA	332.2	184.7	84.3	0.0	0.3	269.3	8.11	
	<b>Sub Total</b>	<b>981</b>	<b>265</b>	<b>299</b>	<b>0</b>	<b>5</b>	<b>569</b>	<b>5.80</b>	
<b>J. Renewables</b>									
i	SECI	44.3	0.0	24.3	0.0	0.0	24.4	5.50	
ii	EDWPCL	7.5	0.0	0.0	0.0	0.7	0.7	0.92	
	<b>Reactive Energy Charges</b>						<b>0.4</b>		
<b>K</b>	<b>Add: Net metering</b>						<b>0.2</b>		
<b>L</b>	<b>Add: DVC Credit from Regulated</b>						<b>121.9</b>		



S. No	Stations	Petitioner Share	Fixed Charge	Variable Charge	Other Charges	Arrears **	Total Charges	Average Rate	Remarks/ Ref
		MU	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs. Cr.	Rs./ kWh	
1	2	3	4	5	6	7	8	9	10
	Power*								
M	Grand Total	7400	1085	1599	64	-216	2655.0	3.59	(H+I+J)

\*Rs. 121.92 Crores already considered by DERC while truing up the Power purchase cost for FY 2014-15 in Tariff Order dated 31.08.2017

\*\*includes PY - Rs. 198.2 Crores; CY- Rs. 17.4 Crores

3.5.6 In accordance with the above, the Petitioner prays that the Hon'ble Commission may kindly allow the aforesaid power purchase cost incurred from long term sources during FY 2016-17.

3.5.7 It is submitted that the Petitioner has disputed the amounts billed by the various generating companies including NTPC, PPCL etc. The ultimate decisions of the concerned forums on the petitions may have an impact on the cost paid to the generating companies.

**b) Short Term Power Purchase:**

3.5.8 The Hon'ble Commission in its previous Tariff Orders has noted that the load curve in Delhi is peculiar in nature with high morning and evening peaks and very low load demand during night hours. It is due to the fact that a majority of the load in Delhi is of commercial establishments, office buildings, which have requirement primarily during day time. Further the Hon'ble Commission directed the Licensee to ensure that electricity which could not be served due to any reason what-so-ever (including maintenance schedule, break-downs, load shedding etc.) shall not exceed 1% of the total energy supplied by them in any particular month, except in cases of force majeure events which are beyond the control of the Licensee. Accordingly during peak hours, the Licensee was required to procure power from short term sources to meet the demand.

3.5.9 The Petitioner has considered the power purchase cost through short term sources during FY 2016-17 which includes the Cost on account of purchase through bilateral, banking, Exchange, intra-state and UI.

**3.5.10 Overlapping of banking transactions:**

As regards banking transactions, it is submitted that banking of power is done ex-ante based on estimates and forecasts done at the beginning of a period. Power so banked is used only for the consumers of the Licensee and is not used elsewhere.

Further, the Hon'ble Commission has emphasised on purchase and sale of surplus power through banking transactions in the interest of consumers. While complying with the direction of the Hon'ble Commission, there may be few instances when there is overlapping of banking transactions. The Petitioner ought not to be penalised for the same as such treatment results in micro-management of the business of the Petitioner and especially when such over-lapping is intrinsic and unavoidable in banking transactions.

For example: The Petitioner forecasts an increase in demand during summer months and arranges 100 MU on short term basis through banking so as to avoid load shedding as well as the burden of costly power during peak hours.

Now in real scenario, the monsoon came early and the demand did not materialise due to which the Petitioner was having surplus power. Consequently, the IEX market prices also went down from Rs. 3.50/ kWh to Rs. 1.80/ kWh as huge surplus power was available in market. However the Petitioner on best effort basis arranges to sell the same through banking which does not attract any cost except transmission charges and trading margin. In case the Petitioner would not have entered into overlapping transactions, the Petitioner would have sold the power @ Rs. 1.80/ kWh. The comparison of two scenarios is tabulated below:

**Comparison:**

S. No	Particulars	UoM	Overlapping banking	IEX transactions
1	Short term purchase through banking	MU	100	100
2	Notional rate for purchase	Rs./ kWh	4	4
3	Power Purchase Cost	Rs. Cr.	40	40
4	Sale of surplus power	MU	100	100
5	Notional rate for sale	Rs./ kWh	4	1.8
6	Revenue from sale of power	Rs. Cr.	40	18
7	Loss from sale of power	Rs. Cr.	0	-22

As indicated above, the overlapping transactions resulted in no loss on account of sale of surplus power with miniscule cost on account of trading margin and transmission charges whereas selling through IEX Transactions could have resulted in loss of Rs. 22 Crore. Therefore such disallowance on account of efficient business decisions to correct the previous actions results in micro-management and does not promote efficiency.

In such situation, the Petitioner shall never be at ease for undertaking banking transactions as the Petitioner will always be in a regulatory uncertainty as to whether the banking transaction being undertaken by the Petitioner would be allowed by the Hon'ble Commission or not. Such approach is clearly inconsistent as on one hand, the Hon'ble Commission advises the Petitioner to maximise revenue from sale of surplus power through banking transactions so as to promote the interest of consumers and on other hand, the Hon'ble Commission penalises the Petitioner on few overlapping banking transactions.

In accordance with the above, the Petitioner requests the Hon'ble Commission to allow all banking transactions as they are revenue neutral in nature.

#### 3.5.11 Contingency limit of 3% on UI:

The Contingency limit to dispose of surplus power in UI at 3% of Gross Power Purchase for every month has been introduced by the Hon'ble Commission for the first time in Tariff Order dated September 29, 2015.

In this regard, it is submitted that the Hon'ble Commission has not provided any basis for determining the Contingency limit to dispose of surplus power in UI at 3% of Gross Power Purchase for every month. It is pertinent to note that the Hon'ble Commission has at no point, either in the Tariff Regulations, or in Availability Based Tariff Regulations or in Guidelines for short term power purchase and sale ever mentioned any such criteria of limiting the UI sale contingency limit to dispose of surplus power in UI, which has now been fixed at 3% on Gross Power Purchase for every month.

The fixation of the 3% norm ought to be by a statutory instrument such as Regulations and could not be by a Tariff Order.

Without prejudice to the above, it is submitted that no such norm was stipulated for the Second MYT period (i.e. FY 2012-13 to FY 2014-15, subsequently extended to FY 2015-16). If no such norm was put in place at the beginning of the MYT Period, but has been inserted towards the end of the MYT Period, the entire principle of regulatory certainty sought to be introduced by the MYT principle, is defeated.

Also on one hand, the Hon'ble Commission CERC, in accordance with FOR recommendations, is levying penalty on UI Purchases below threshold frequency specified by CERC in UI Regulations and on the other hand, the Hon'ble Commission is levying penalty on UI sales by setting arbitrary contingency limit which have neither been specified by FOR nor by CERC.

Therefore the contingency limit of 3% on UI cannot be applied while

undertaking true-up of FY 2016-17.

### 3.5.12 UI Charges below 49.7 Hz frequency:

The Hon'ble Commission in Tariff Order dated July 13, 2012 deducted the additional UI Charges borne below 49.5 Hz frequency based on the recommendations given by Forum of Regulators (FOR). The Petitioner had challenged the issue of additional UI Charges borne on account of UI power purchased below 49.50 Hz before Hon'ble ATE. The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 & 178 of 2012) has given its observations on the said issue against the Petitioner. However the Petitioner has preferred a statutory appeal before the Hon'ble Supreme Court against the aforesaid Judgment of the Hon'ble ATE dated March 2, 2015. Without pre-judice to its aforesaid Appeal, and without admitting or waiving any of its contentions against the said Judgment dated March 2, 2015 or this Hon'ble Commission's order dated July 13, 2012 insofar as the decision on additional UI Charges is concerned, the Petitioner has considered the actual UI purchase while computing the power purchase cost.

3.5.13 The source-wise details of short term power purchase cost during FY 2016-17 are tabulated below:

**Table 3.13: Details of Short Term Power Purchase**

S. No	Particulars	FY 2014-15		FY 2015-16		FY 2016-17	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)
A	Bilateral	4.09	40.9	3.99	36.1	2.88	13.4
B	Banking	3.93	248.2	3.91	183.3	3.92	209.7
C	Exchange	4.39	120.3	3.42	11.2	3.94	20.1
D	Intra-State	2.5	1.5	2.81	3.5	2.06	7.7
E	UI	3.35	44.5	3.06	38.2	2.79	16.7
F	<b>Total</b>	<b>3.98</b>	<b>455.5</b>	<b>3.73</b>	<b>272.3</b>	<b>3.67</b>	<b>267.8</b>

3.5.14 In view of the above, we request the Hon'ble Commission to kindly allow the power purchase cost of Rs. 267.8 Crore during FY 2016-17 from short term sources as submitted in the above table.

### c) Sale of surplus energy:

3.5.15 The Petitioner put its all-out efforts to maximize the revenue through sale of surplus power. However the Petitioner has realized the revenue of Rs. 213.9 Crore from sale of surplus power during FY 2016-17.

3.5.16 The source-wise details of revenue realized through sale of surplus energy during FY 2016-17 are tabulated below:

**Table 3.14: Details of Short term power sales**

S. No	Particulars	FY 2014-15		FY 2015-16		FY 2016-17	
		Rate per unit	Amount	Rate per unit	Amount	Rate per unit	Amount
		(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)	(Rs. / kWh)	(Rs. Cr.)
A	Bilateral	3.18	1.0	2.95	59.4	2.98	66.7
B	Banking	3.88	302.0	3.98	222.6	3.99	75.1
C	Exchange	2.39	23.0	2.23	67.7	2.08	72.3
D	Intra-State	3.57	14.0	3.14	0.3	2.03	2.1
E	UI	1.38	18.0	0.27	0.8	14.14	-2.4
F	<b>Total</b>	<b>3.41</b>	<b>358.0</b>	<b>3.21</b>	<b>350.8</b>	<b>2.79</b>	<b>213.9</b>

3.5.17 The Petitioner requests the Hon'ble Commission to consider the revenue on account of sale of surplus power while approving the net power purchase cost as submitted in the above table.

d) Gross Power Purchase Cost:

3.5.18 Based on the above submissions, the Petitioner has considered the gross power purchase cost of Rs. 3566.5 Crores including Rs.121.9 Crores of credit received (from DVC Regulated Power) during FY 2016-17 which is already adjusted by the Hon'ble Commission in the power purchase cost for FY 2014-15 in Tariff Order dated August 31, 2017.

3.5.19 Accordingly, the Gross Power Purchase during FY 2016-17 is tabulated below:

**Table 3.15: Gross Power Purchase Cost before rebate during FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Reference
A	Audited Gross Power Purchase Cost		
i	Purchase of Energy	2800.9	Note 34 of Audited Accounts (excl. LPSC)
ii	Transmission cost	643.6	
B	<b>Total Gross Power Purchase Cost excluding LPSC</b>	<b>3444.5</b>	<b>i+ii</b>
C	Add: DVC Credit from Regulated Power	121.9	Table 122 of T.O. dated 31.08.2017
D	<b>Total Gross Power Purchase Cost excluding LPSC including Credit</b>	<b>3566.5</b>	<b>B+C</b>

### 3.6 Rebate on power purchase and Transmission Charges

3.6.1 The Hon'ble Commission vide letter dated June 5, 2014 specified the format for submission of details of rebate on power purchase and

transmission charges. As regards the long term generating and transmission companies charges, rebate is not allowed on interest charges and other billing items which are in nature of reimbursement, such as Income Tax, Other Taxes, Cess, Duties etc. Rebate is generally allowed on all other billing items. The rebate on power purchase and Transmission Charges is tabulated below:

**Table 3.16: Details of Rebatable and Non Rebatable amount FY 2016-17**

S. No.	Party/Company	Rebatable Amount	Non-Rebatable Amount	Actual Rebate Claimed
1	NTPC*	1,231	12	-
2	NHPC	32	(10)	-
3	Nuclear	50	1	-
4	SJVNL	26	(12)	-
5	THDC	0	(0)	-
6	Tala HEP	5	-	-
7	DVC	337	0	-
8	<b>Power stations in Delhi</b>			
8.1	PPCL	394	-	-
8.2	IPGCL	33	-	-
9	ARAVALI	149	(2)	-
10	SASAN	260	0	-
11	SECI	-	24	-
12	EDWPCPL	1		
<b>A</b>	<b>Total Long Term Purchase</b>	<b>2,518</b>	<b>14</b>	<b>0</b>
11	Short Term Purchases	-	13	-
12	Short Term sale			-
13	<b>Transmission Charges</b>			
13.1	Power Grid Corp. of India Ltd.	309	-	-
13.2	Delhi Transco Ltd.	193	109	-
13.3	Bhakra Beas Manegment Board		0	-
13.4	NTPC	4	-	-
13.5	Arawali Power Company Private Ltd.	0	0	-
13.6	Damodar Valley Corporation	(16)		-
13.7	SECI		2	
<b>B</b>	<b>Total Transmission Charges</b>	<b>491</b>	<b>111</b>	
<b>C</b>	<b>Total</b>	<b>3,010</b>	<b>139</b>	

3.6.2 As regards the normative rebate, it is most respectfully submitted that the Hon'ble Commission in Tariff Order dated September 29, 2015 did not apply the provisions of Regulation-5.24 of MYT Regulations, 2011. However the normative rebate ought not be applied at the time of true-up due to the following reasons:

- a. The normative rebate cannot be considered at the stage of true-up. In any event, the deduction of a normative rebate assuming a maximum of 2% of the power purchase cost is *ex facie* in contravention of Hon'ble Tribunal's judgment in Appeal No. 153 of 2009 which expressly restricted such a deduction to 1% of the power purchase cost.
- b. The Hon'ble Commission has completely ignored Regulation-4.21 of MYT Regulations, 2011 which provides that the power purchase cost is uncontrollable in nature and shall be true-up based on actuals. The Regulation does not provide any distinction for treatment of rebate. The rebate on power purchase being an intrinsic and inseparable part of power purchase must also be true up on actual in terms of Regulation 4.21 of the said Regulations.
- c. The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 178 of 2012) has again confirmed the Judgment dated July 30, 2010 (Appeal 153 of 2009) and directed that normative rebate of upto 1% can be considered as per the norms specified for working capital in DERC Tariff Regulations, 2011 which means that actual rebate is to be considered and if actual rebate availed exceeds 1% then 1% is to be considered.
- d. The Hon'ble Commission has based the normative rebate on inappropriate assumptions. The concept of normative rebate is based on assumptions that the system is perfect and business as usual as under:
  - i. There is no creation of Regulatory Asset. However, there is an accumulated figure of Rs. 2662 Crore upto FY 2015-16 as Regulatory Asset;
  - ii. The Hon'ble Commission has timely implemented all the Judgments of this Hon'ble Tribunal. In fact as indicated of this Petition, seven (7) number of judgments are yet to be implemented; and
  - iii. There is no major variation in power purchase cost.

In fact, to the best of the knowledge of the Petitioner, in any no other state any DISCOM has been able to avail maximum normative rebate when aforesaid conditions are not met. Accordingly, the Hon'ble

Commission ought not base the normative rebate on any inapposite assumptions.

- e. The Hon'ble Commission has omitted to note that the Petitioner has not opened LC in case of any Generator. The 2% rebate is admissible only in the event that payment is made through LC. This is clear from the regulations of the Hon'ble Commission and of the CERC, extracted hereunder:

DERC Generation Tariff Regulations, 2011:

***"Rebate***

*7.26 For payment of bills of the generating company **through a letter of credit** on presentation, a rebate of 2% shall be allowed. If the payment is made by any other mode but within a period of one month of presentation of bills by the generating company, a rebate of 1% shall be allowed."*

DERC Transmission Tariff Regulations, 2011:

***"Rebate***

*5.28 For payment of bills of the Transmission Licensee **through a letter of credit** on presentation, a rebate of 2% shall be allowed. If the payment is made by any other mode but within a period of one month of presentation of bills by the Transmission Licensee, a rebate of 1% shall be allowed."*

CERC Tariff Regulations, 2009-14 clearly states as under:

*"34. Rebate. (1) For payment of bills of the generating company and the transmission licensee **through letter of credit** on presentation, a rebate of 2% shall be allowed. (2) Where payments are made other than through letter of credit within a period of one month of presentation of bills by the generating company or the transmission licensee, a rebate of 1% shall be allowed."* {Emphasis added}

As set out herein above, the Petitioner cannot and is not making payment of bills to any generating company and transmission licensee through letter of credit on presentation. Therefore the normative rebate of 2% is contrary to the said DERC regulations and the CERC Tariff Regulations, 2009-14.

- 3.6.3 In view of the above submissions, the Petitioner requests the Hon'ble Commission to consider the actual rebate on power purchase and Transmission Charges during FY 2016-17.



**3.7 Total Power Purchase Cost for the purpose of Truing-up**

3.7.1 Based on the above submissions, the actual power purchase cost claimed during FY 2016-17 is tabulated below:

**Table 3.17: Power Purchase Cost during FY 2016-17 based on Auditor's Certificate (Rs. Crore)**

S. No.	Particulars	Submission	Reference
<b>A</b>	<b>Power Purchase Cost</b>		
i	Gross Power Purchase Cost	2922.8	Table 3.12 & 3.13
ii	Power sold to other sources	213.9	Table 3.14
iii	Net Power Purchase Cost	2709.0	i-ii
<b>B</b>	<b>Transmission Charges</b>		
i	Inter-state transmission charges	299.8	
ii	Intra-state transmission charges	302.8	
iii	Other Transmission charges	41.0	
iv	Total Transmission charges	643.6	i+ii+iii
<b>C</b>	<b>Rebate</b>		
i	Power Purchase Rebate	0	
ii	Rebate on Transmission Charges	0	
iii	Total rebate	0	i+ii
<b>D</b>	<b>Net Power Purchase Cost including Transmission charges net of rebate</b>	<b>3352.6</b>	<b>A+B-C</b>

3.7.2 The Petitioner requests the Hon'ble Commission to approve the power purchase cost during FY 2016-17 as submitted in the above table.

**3.8 Truing-up of past period up to FY 2015-16**

3.8.1 The claims pertaining to true-up pending with respect to past period have been divided into three parts as under:

- A. Directions of Hon'ble ATE given in various Judgments having financial impact of Rs. 5916 Crores (Ref. Table 3.17bn).
- B. Previous claims where either additional data was sought or there are certain errors having financial impact of Rs. 2277 Crores including carrying cost (Ref. Table 3.17ct).
- C. Claims on account of arithmetical/computational errors and/or omissions in the previous Tariff Order, sought for consideration of the Hon'ble Commission having financial impact of Rs. 835 Crores including carrying cost (Ref. Table 3.17cu).

3.8.2 These claims have been discussed in detail in subsequent paragraphs and

the impact of such claims has been considered along with carrying cost upto FY 2015-16.

**A. Directions of Hon'ble ATE given in various Judgments:**

3.8.3 The Hon'ble ATE has given several directions to the Hon'ble Commission in various Judgments which are listed below:

**Table 3.17a: Directions given by Hon'ble Tribunal in various Judgments**

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
1	Deferment of Capitalisation based on EI Certificate	October 6, 2009	To allow the capitalisation based on EI Application plus 15 days
		March 2, 2015	To conduct physical verification of assets and complete exercise within 6 months
2	Disallowance of Capex on account of REL Purchases	October 6, 2009	To allow the impact based on comparison with NDPL prices
		March 2, 2015	To provide all the data for comparison within a month of receipt of requirement by the Petitioner
3	True up of Cost of Debt	October 6, 2009	True-up rate of interest of loans based on variation in SBI PLR
		November 28, 2014	To true-up the rate of interest as SBI PLR has varied by more than +/-1%
		February 10, 2015	To true-up the rate of interest pertaining to working capital loans from FY 13 to FY 15 based on actuals.
		March 2, 2015	To true-up the rate of interest as SBI PLR has varied by more than +/-1%
4	Non consideration of Repayment of loans	November 28, 2014	To consider repayment of loans while computing WACC
		March 2, 2015	To consider repayment of loans while computing WACC
5	Funding of Working Capital	May 31, 2011	To consider the working capital in debt-equity ratio of 70:30
		November 28, 2014	Implement the directions in letter and spirit
		March 2, 2015	Implement the directions in letter and spirit
6	Truing-up of FY 2007-08-First 11 months	July 12, 2011	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1
		November 28, 2014	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1
		March 2, 2015	To allow the impact on truing-up of FY 08 (11 months) as per Reg. 12.1
7	Revision in distribution loss trajectory from FY 2007-08 to FY 2010-11	October 6, 2009	To amend the distribution loss based on the representation made by DISCOMs
		November 28, 2014	To reconsider the matter within 3 months of the Judgment based on submission of the DISCOM
		March 2, 2015	To reconsider the matter within 3 months of the Judgment based on submission of the DISCOM
8	Truing-up of AT&C Loss for FY 2008-09	November 28, 2014	To reconsider the matter taking into account the information submitted by the DISCOM

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
9	Impact of 6th pay commission for Non-DVB Employees	October 6, 2009	To allow the impact of 6th pay commission for non-DVB Employees if incurred by DISCOM
		May 15, 2015	To allow the impact of 6th pay commission for non-DVB Employees as average salary of Non-DVB Employees still less than DVB Employees
10	AT&C Loss for FY 2011-12	November 28, 2014	To consider the AT&C Loss for FY 2011-12 as per letter dated March 8, 2011
11	Non-Revision of AT&C Loss targets for 2 <sup>nd</sup> MYT Period	March 2, 2015	To set a reasonable loss trajectory and revise the AT&C Loss trajectory from FY 2012-13 to FY 2014-15 by a percentage of 1.05%, 1.2% and 1.25%. To revise the collection efficiency
12	Increase in employee expenses corresponding to increase in consumer base	October 6, 2009	To allow the increase in employee expenses corresponding to increase in consumer base
13	Payments to VRS optees	October 6, 2009	To allow the payment to VRS optees pending decision of Actuarial Tribunal
		November 28, 2014	To allow the payments made by the DISCOM on ad-hoc basis and adjust the same after decision of Actuarial Tribunal
		March 2, 2015	To allow the payments made by the DISCOM on ad-hoc basis and adjust the same after decision of Actuarial Tribunal
14	R&M and A&G Expenses from FY 2004-05 to FY 2006-07	October 6, 2009	To allow the R&M and A&G Expenses from FY 05 to FY 07 on actual basis subject to prudence check
		November 28, 2014	To allow the R&M and A&G Expenses from FY 05 to FY 07 on actual basis subject to prudence check and not to circumvent the decisions given in Judgment dated October 6, 2009
		March 2, 2015	To allow the R&M and A&G Expenses from FY 05 to FY 07 on actual basis subject to prudence check and not to circumvent the decisions given in Judgment dated October 6, 2009
15	Lower rates of carrying cost	July 30, 2010	To allow the carrying cost in debt-equity ratio of 70:30 by considering prime lending rates
		November 28, 2014	To allow the carrying cost in debt-equity ratio of 70:30 by considering prime lending rates
		March 2, 2015	To allow the carrying cost in debt-equity ratio of 70:30 by considering market lending rates
16	Efficiency factor for FY 2011-12	November 28, 2014	To allow the impact on account of arbitrary determination of efficiency factor during FY 2011-12
17	Efficiency factor from FY 2012-13 to FY 2015-16	March 2, 2015	To re-determine the efficiency factor from FY 13 to FY 15 based on the comparison with utilities with similar loss level or utilities operating in Metropolitan cities for at least last three years
18	Efficiency factor for FY 2010-11	March 2, 2015	To allow the impact on account of arbitrary determination of efficiency factor for FY 2010-11
19	Computation of	November 28, 2014	To recompute the AT&C losses for FY 2009-10 using

S. No	Issue	Date of Judgment	Direction to the Hon'ble Commission
	AT&C Loss for FY 2009-10		actual kWh figures as recorded in Para-4.8 of the Impugned order
20	Financing cost of LPSC based on SBI PLR	March 2, 2015	To allow LPSC at prevalent market lending rates
21	DVB Arrears while computing AT&C loss for FY 2008-09	November 28, 2014	To determine the AT&C Loss with same ingredients in numerator and denominator
		March 2, 2015	To determine the AT&C Loss with same ingredients in numerator and denominator
22	Incorrect revision of R&M Expenses by revising "K" factor	March 2, 2015	To include R&M Expenses incurred during FY 08 while determination of K factor for second control period
23	Additional UI Charges above 49.5 Hz	March 2, 2015	To allow UI charges incurred above 49.5 Hz in FY 2010-11
24	RPO Penalty	April 1, 2015	To issue a reasoned order based on Petition of the Appellant to relax RPO Targets

**Issue-A1: To allow the capitalisation based on EI Application plus 15 days:**

3.8.4 The Hon'ble Commission in the Tariff Order dated February 23, 2008 disallowed capitalisation of Rs. 300 crores, pending clearance for the capital schemes by the Electrical Inspector for the FY 2004-05 to FY 2006-07. The capital schemes have been put to use by the Petitioner, and are servicing 15.8 lakh consumers. However, since FY 2004-05 the Petitioner has been deprived of the costs of such expenditure.

3.8.5 The Hon'ble ATE in its order dated October 6, 2009 (Appeal 36 of 2008) has rendered the following decision:

*"118) ...For capitalisation of fresh assets the DISCOM shall make appropriate applications to the Electrical Inspector and the capitalisation of such assets will be allowed w.e.f. 16th day of filing of the application and payment of necessary fee.."*

3.8.6 Further, the Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 & 178 of 2012) directed the Hon'ble Commission as under:

*"10.4... We, therefore direct the State Commission to carry out the physical verification of the assets capitalised during FY 2004-05 and 2005-06 through its appointed agency and expedite implementation of the decision of this Tribunal in Appeal no. 36 of 2008 decided on 06.01.2009. The whole issue shall be decided within 6 months of the date of this Judgment."*

3.8.7 The Petitioner has already filed a review petition (RP No. 17 of 2015) against the aforesaid issue as the physical verification of assets pertaining to FY 2004-05 and FY 2005-06 has already been carried on a sample basis by the Hon'ble Commission. Without pre-judice to the contentions of the Petitioner in RP No. 17 of 2015, the Petitioner requests the Hon'ble

Commission to allow the impact on account of aforesaid direction.

- 3.8.8 The Hon'ble Commission in Tariff Order dated August 31, 2017 stated as under:

*"3.15 Further, the Petitioner has submitted segregation of disallowed schemes on account of non-availability of Electrical Inspector Certificates and related party transactions as well as reconciliation of any scheme capitalised in the subsequent years. As the data is voluminous and its segregation will take some time, therefore, the impact due if any, on non-related party transactions, will be considered in the subsequent Tariff Orders whose Electrical Inspector Certificates have been obtained."*

- 3.8.9 Accordingly the Petitioner has computed the total impact on account of EI disallowances along with directions of Hon'ble ATE on other capex related claims in the Para-3.8.18 to Para-3.8.32 of the Petition.

**Issue-A2: To allow the capex & capitalisation pertaining to REL Purchases:**

- 3.8.10 The Hon'ble Commission in its' Tariff Order dated February 23, 2008 disallowed capital expenditure of Rs. 170.84 crores, since the goods were purchased by the Petitioner from REL for Rs. 364.87 crore during FY 2004-05 & FY 2005-06. The goods purchased have been put to use by the Petitioner, and is servicing 15.8 lakh consumers. However, since FY 2004-05 the Petitioner has been deprived of the costs of such expenditure.

The year-wise bifurcation of the disallowance is tabulated below:

**Table 3.17b: Impact on account of disallowance of REL Purchase (Rs. Cr.)**

S. No	Particulars	FY 05	FY 06	FY 07	FY 08
1	REL Disallowances	6.37	41.08	65.92	57.47
2	Reference	Annexure-V; Para 32; Pg. No. 275 of Tariff Order dated 23.02.2008			

- 3.8.11 The Hon'ble ATE in its Judgment dated October 6, 2009 (Appeal 36 of 2008) has viewed the following:

*"57)...As such the records are expected to be with the Commission. We think it is appropriate to allow the appellant an opportunity to prove, item-wise, that the price paid by it to REL was not higher than the price paid by NDPL and allowed to it by the Commission for similar products. The onus would be entirely on the appellant to prove that the products purchased by it and the one purchased by NDPL offered for comparison are of the same technical specifications and quality and also should be similarly priced on account of the other relevant factors influencing the prices namely the time of purchase, the*

*quantity purchased, vender rating etc. In case the price paid to REL is same as or lower than the price allowed to NDPL for a comparable commodity, the Commission shall allow the price paid to REL. The Commission shall, however, allow a lesser price if the NDPL's price is lower than the price of REL's purchase plus 5% profit margin...."*

3.8.12 The Petitioner vide its letter dated September 13, 2013 has already furnished the information as desired by Hon'ble Commission, whereby, the Petitioner has suitably submitted a comparison of rates of the capital expenditure incurred for equipment's purchased from REL, with rates as that of TPDDL which could be obtained on best effort basis. Earlier, the Petitioner vide its letter dated December 1, 2009 requested the Hon'ble Commission to provide the necessary information pertaining to TPDDL required for comparison as per the directions of Hon'ble ATE. However the same was not provided by the Hon'ble Commission and therefore the Petitioner has submitted the information to the extent it could be obtained.

3.8.13 Based on the information as obtained from the market sources, the Petitioner furnished documents which demonstrate that out of Rs. 364.87 cr., being the value of total goods purchased from REL, the price paid for goods worth Rs. 169.22 cr. i.e. ~ 46% were lower than the price paid by TPDDL.

3.8.14 The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 & 178 of 2012) directed the Hon'ble Commission as under:

*"9.6 Without going into the controversy, we direct the Appellants to submit the details of the items for which data is required by an application to the State Commission. **The State Commission will make available the data to the Appellants within a month of the application. The Appellant after analysis will file its claim before the State Commission and the Commission will consider the same as per the directions of the Tribunal in Appeal no. 36 of 2008 decided on 06.01.2009 and decide the matter within 60 days of submissions made by the Appellants. Accordingly directed.**" (Emphasis supplied)*

3.8.15 In accordance with the aforesaid directions, the Hon'ble Commission vide letter dated April 20, 2015 informed the Petitioner to inspect the documents in Petition No. 50 of 2007 on April 23, 2015. The Petitioner duly and promptly visited the office of the Hon'ble Commission at given time to inspect the documents. The documents shown during 2<sup>nd</sup> inspection on April 23, 2015 contained only the relevant letters referring to Purchase Orders, Invoices, BOQ but not the copy of Purchase Orders,



Invoices, BOQs which are actually required for the comparison with TPDDL. The Petitioner vide letter number RA/ BYPL/2015-16/ 71 dated June 5, 2015 informed the Hon'ble Commission about the incomplete documents shown at the time of inspection on April 23, 2015.

3.8.16 Instead of responding to the above letter dated June 5, 2016, the Hon'ble Commission has, in Tariff Order dated August 31, 2017 stated that the Petitioner has failed to comply with the directions of this Hon'ble Tribunal in the Appeal 178 Judgment. The Hon'ble Commission has held as under:

*"3.23 The Commission has not considered this issue in this Tariff Order because the Petitioner has failed to comply with the directions of the Hon'ble APTEL in Appeal No. 177 & 178 of 2012. This aspect has also been submitted before the Hon'ble APTEL in Appeal No. 290 of 2015."*

3.8.17 In view of the above, the Petitioner requests the Hon'ble Commission to allow the impact of capitalization pertaining to REL Purchases as the same has already been delayed for more than 9 years despite of the fact that data is available with the Hon'ble Commission.

3.8.18 Considering the capitalisation on account of EIC and REL in respective Financial Years in which the disallowance was considered by the Hon'ble Commission in its MYT Order dated February 23, 2008, the revised GFA upto FY 2006-07 will be as under:

**Table 3.17c: GFA for the Policy Direction Period (Rs. Crore)**

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Opening GFA	360.0	382.7	461.5	687.2	1,043.9
2	Opening CWIP	-	33.7	42.5	232.5	229.9
3	Investment during Year	56.4*	87.7*	415.8	358.2	282.6
4	Assets capitalised	22.7*	78.8*	225.8	360.8	237.3
5	Closing WIP	33.7	42.5	232.5	229.9	275.2
6	Less: Retirements	-	-	0.1	4.1	1.9
7	<b>Closing GFA</b>	<b>382.7</b>	<b>461.5</b>	<b>687.2</b>	<b>1,043.9</b>	<b>1,279.3</b>

\* Includes amount transferred from R&M and A&G expenses to capex (as considered by the Hon'ble Commission in Tariff Order dated 26.03.2003 & 09.06.2004).

Consequently, the GFA for the period FY 2007-08 to FY 2015-16 will be revised as under:

**Table 3.17d: GFA for the period FY 2007-08 to FY 2015-16 (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
A	Opening GFA	1279.3	1526.3	1801.7	1988.8	2196.2	2287.5	2310.8	2451.1	2676.1
B	Capitalisation during the year	249.2	276.7	188.3	208.9	97.0	69.1	148.6	245.0	261.9
C	De-capitalisation*	2.3	1.3	1.3	1.4	5.7	45.8	8.2	20.0	45.9

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
D	Closing GFA	1526.3	1801.7	1988.8	2196.2	2287.5	2310.8	2451.1	2676.1	2892.1
E	Average GFA	1402.8	1664.0	1895.3	2092.5	2241.8	2299.1	2381.0	2563.6	2784.1

*\*considered provided that the Hon'ble Commission also allows the loss on assets retirement of assets as per the Petition No. 35 of 2013 filed by the Petitioner.*

3.8.19 The financial impact on account of revision in capitalisation and other capex related claims discussed in the subsequent paras of this Petition is computed as follows:

#### Depreciation

3.8.20 The implementation of Hon'ble ATE directions with respect to capitalisation will also lead to revision in depreciation from FY 2002-03 to 2006-07 as under:

**Table 3.17e: Revised depreciation for Policy Direction Period (Rs. Crore)**

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Opening GFA	360	382.7	461.5	687.2	1,043.90
B	Additions	22.7	78.8	225.8	360.8	237.3
C	De-capitalisation	-	-	0.1	4.1	1.9
D	Closing	382.7	461.5	687.2	1,043.90	1,279.30
E	<b>Depreciation@6.69%</b>	<b>24.1</b>	<b>25.6</b>	<b>30.9</b>	<b>46</b>	<b>69.8</b>
F	Depreciation allowed	18.1	25.6	30.9	43.0	48.9
G	Difference (E-F)	6.0	0.0	0.0	3.0	20.9

**Table 3.17f: Revised depreciation for the period FY 2007-08 to FY 2015-16 (Rs. Crore)**

S. No.	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
A	Average GFA	1,402.8	1,664.0	1,895.3	2,092.5	2,241.8	2,299.1	2,381.0	2,563.6	2,784.1
B	Average Consumer Contribution and Grants	29.4	41.3	59.7	99.9	134.1	143.8	162.0	188.4	209.3
C	Average assets net of consumer contribution & Grants	1,373.4	1,622.7	1,835.6	1,992.6	2,107.8	2,155.4	2,218.9	2,375.2	2,574.9
D	Average rate of depreciation*	3.89%	3.86%	3.83%	3.81%	3.81%	3.81%	3.80%	3.80%	3.79%
E	<b>Depreciation</b>	<b>53.4</b>	<b>62.7</b>	<b>70.3</b>	<b>75.9</b>	<b>80.3</b>	<b>82.0</b>	<b>84.4</b>	<b>90.3</b>	<b>97.6</b>
F	Depreciation allowed	51.7	43.6	52.0	57.7	62.1	53.9	75.0	74.1	81.7
G	Difference (E-F)	1.7	19.1	18.3	18.2	18.2	28.1	9.3	16.2	15.9

*\*computed in terms of MYT Regulations 2007 and 2011*



**Table 3.17g: Cumulative depreciation upto FY 2015-16 (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
A	Opening balance of cumulative depreciation	196.4	249.8	312.4	382.7	458.6	538.9	620.9	705.3	795.6
B	Additions during FY 2013-14	53.4	62.7	70.3	75.9	80.3	82.0	84.4	90.3	97.6
C	Closing balance of cumulative depreciation	249.8	312.4	382.7	458.6	538.9	620.9	705.3	795.6	893.2

Means of finance:

3.8.21 The Hon'ble Commission in Tariff Order dated September 29, 2015 considered the means of finance as per the net-worth formulae proposed in Tariff Order dated July 31, 2013.

3.8.22 As discussed in Para-3.8.279 to Para-3.8.282, the Petitioner has considered the funding of capitalisation from FY 2002-03 to FY 2015-16 in debt-equity ratio of 70:30

a) Funding of capital expenditure from FY 2002-03 to FY 2006-07:

- The means of finance from FY 2002-03 to FY 2006-07 as considered by Hon'ble Commission in Tariff Order dated February 23, 2008 is tabulated below:

**Table 3.17h: Funding of capex from FY 03 to FY 07 approved by the Commission in Tariff Order dated February 23, 2008 (Rs. Crore)**

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Capital Expenditure	56	88	414	299	209
B	Closing value of sundry creditors				104	85
C	Financing Required	52	88	414	403	295
	Funding					
D	Consumer Contribution	8	14	34	17	21
E	APDRP Grants		16			
F	APDRP Loans		16			
G	Depreciation	8	9	9	38	44
H	Internal accruals	11	10	40	31	36
I	Loan	25	23	227	231	194
J	Closing value of sundry creditors			104	85	
K	<b>Total</b>	<b>52</b>	<b>88</b>	<b>414</b>	<b>403</b>	<b>295</b>

- During the Policy Direction Period, the funding of capital expenditure was allowed instead of capitalisation in the following priority:

- a) Consumer contribution
  - b) APDRP Grant/ Loan
  - c) Unutilised depreciation including available unutilised depreciation of previous years
  - d) Balance funds required-assumed normative debt to equity ratio of 70:30.
- In case of EI, only capitalisation was disallowed. However in case of REL Purchase, both capital expenditure and capitalisation was disallowed.
  - As regards the consumer contribution utilised for means of finance, it is humbly submitted that the amount of consumer contribution received during the year was utilised towards the funding of capex. Despite that the Hon'ble Commission vide its Order dated March 11, 2014 directed the Discoms to refund the unutilised consumer contribution to the respective consumers along with interest @ 12%. Aggrieved by the said Order, the Petitioner filed an Appeal before Hon'ble ATE wherein the Hon'ble ATE vide judgment February 23, 2015 remanded the matter back to the Hon'ble Commission giving liberty to the Appellant to furnish the accounts showing that the excess amount of consumers contribution has been duly considered in the ARRs from FY 2002-03 onwards in reducing the retail supply tariffs. The Hon'ble Commission vide mail dated March 24, 2015 directed the Petitioner to submit the consumer contribution data duly audited in a specified format. The Petitioner vide letter dated May 5, 2015 submitted the data duly certified by Auditor with respect to consumer contribution. Subsequently, vide its letter dated July 28, 2015 the Petitioner submitted the data pertaining to consumers contribution for capital works upto FY 2014-15, besides the data upto FY 2013-14 submitted earlier vide its email dated June 24, 2015. Accordingly, the Petitioner has considered the amount of consumer contribution for FY 2002-03 to FY 2015-16 as under:

**Table 3.17i: Average Consumer contribution during FY 03 to FY 16 (Rs. Crore)**

Particulars	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
Opening	0	0	0	1	4	9	18	32	55	113	123	132	159	185
Capitalised during the year	0	0	1	3	5	9	15	22	58	10	9	27	26	16
Closing	0	0	1	4	9	18	32	55	113	123	132	159	185	201
Average	0	0	1	2	6	13	25	43	84	118	128	146	172	193

- The Petitioner has received APDRP grant of Rs. 16.22 Crores in FY

2003-04.

- The revised depreciation so computed has been considered for computing means of finance from FY 2002-03 to FY 2006-07. The utilisation of depreciation is tabulated as under:

**Table 3.17j: Revised Utilisation of depreciation from FY 03 to FY 07 (Rs. Crore)**

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	Depreciation Available for the year	24.1	25.6	30.9	46.0	69.8
1	Utilised for repayment of loan			2.5	4.8	5.2
2	Utilised for working capital requirement	10.1	14.4	17.3		
3	Utilised for Capital Investment	14.0	11.3	11.1	41.2	64.7

- Balance funds are assumed to be funded in normative debt to equity ratio of 70:30.
- Revised means of finance from FY 2002-03 to FY 2006-07 after considering REL purchase is tabulated below:

**Table 3.17k: Revised means of finance from FY 03 to FY 07 (Rs. Crore)**

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
A	<b>Financing Required</b>	<b>56.4</b>	<b>87.7</b>	<b>415.8</b>	<b>358.2</b>	<b>282.6</b>
	<b>Funding</b>					
B	Consumer Contribution	-	-	1.0	2.7	5.0
C	APDRP Grant		16.2			
D	APDRP Loan		16.2			
E	Depreciation	14.0	11.3	11.1	41.2	64.7
F	Equity	12.7	13.2	121.1	94.3	63.9
G	Loan	29.7	30.8	282.6	220.0	149.1
H	<b>Total</b>	<b>56.4</b>	<b>87.7</b>	<b>415.8</b>	<b>358.2</b>	<b>282.6</b>

b) Funding of capitalisation from FY 2007-08 to FY 2015-16:

- For calculation of debt-equity during respective Financial Years, the amount of consumer contribution capitalised has been deducted from the capitalisation during the year and ratio of 70:30 has been applied on the remaining amount to calculate the amount of debt and equity pending implementation of Hon'ble ATE Directions in various Judgments.
- The financing of investment capitalised from FY 2007-08 to FY 2015-16 has been shown below:

**Table 3.17l: Financing of Investment capitalised from FY 2007-08 to FY 2015-16 (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16	Remarks/ Ref.
A	Capitalisation	249.2	276.7	188.3	208.9	97.0	69.1	148.6	245.0	261.9	Table 3.17d
B	De-capitalisation	2.3	1.3	1.3	1.4	5.7	45.8	8.2	20.0	45.9	Table 3.17d
C	Consumer contribution	9.0	14.7	22.2	58.3	10.0	9.4	27.2	25.5	16.3	Table 3.17i
D	Net	<b>238.0</b>	<b>260.8</b>	<b>164.9</b>	<b>149.2</b>	<b>81.2</b>	<b>13.9</b>	<b>113.2</b>	<b>199.5</b>	<b>199.7</b>	D=A-B-C
E	Equity (30%)	166.6	182.5	115.4	104.4	56.9	9.8	79.2	139.6	139.8	0.3 X D
F	Debt (70%)	71.4	78.2	49.5	44.7	24.4	4.2	34.0	59.8	59.9	0.7 X D

Working Capital

3.8.23 The Working Capital from FY 2007-08 to FY 2015-16 has been calculated in accordance with the MYT Regulations, 2007 and MYT Regulations, 2011 as under:

**Table-3.17m: Working Capital Requirement (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	O&M Expenses	224	204	339	270	285				
A	O&M Expenses- 1 Month	19	17	28	22	24				
2	Receivables	1365	1563	2348	3076	3504	3325	3801	4236	4479
A	Receivables-2 Months	228	260	391	513	584	554	633	706	746
3	Less: PP Cost	962	1134	1655	2330	2765	3482	3634	3701	3083
A	PP Cost- 1 Month	80	95	138	194	230	290	303	308	257
4	Total WC Requirement	166	183	282	341	377	264	331	397	490

3.8.24 Funding of working capital from FY 2007-08 to FY 2011-12 has been considered in the debt-equity ratio of 70:30. The working capital from FY 2012-13 onwards has been considered to be funded through 100% debt.

Debt and Equity

3.8.25 As discussed in Para-3.8.279 to Para-3.8.282 of the Petition, the Hon'ble Commission has not provided the debt and equity schedule from FY 2002-03 to FY 2015-16.

3.8.26 The Petitioner has considered one-tenth of the outstanding balance of loan as repayment during the year. The same has been deducted from the loan

balance for calculation of average debt during the year.

3.8.27 Based on the above discussions, the revised debt and equity for FY 2002-03 to FY 2015-16 is tabulated as under:

**Table-3.17n: Average Equity upto FY 2015-16 (Rs. Crore)**

S. No	Financial Years	Opening	Capex	Working Capital	Closing	Average
1	FY 2002-03	116	13		129	122
2	FY 2003-04	129	13		142	135
3	FY 2004-05	142	121		263	202
4	FY 2005-06	263	94		357	310
5	FY 2006-07	357	64		421	389
6	FY 2007-08	421	71	37	530	476
7	FY 2008-09	530	78	5	613	572
8	FY 2009-10	613	49	30	692	653
9	FY 2010-11	692	45	18	755	724
10	FY 2011-12	755	24	11	790	772
11	FY 2012-13	790	4		794	792
12	FY 2013-14	794	34		828	811
13	FY 2014-15	828	60		888	858
14	FY 2015-16	888	60		948	918

**Table-3.17o: Average debt upto FY 2015-16 (Rs. Crore)**

S. No	Financial Years	Opening	Capex	Working Capital	Repayment	Closing	Average
1	FY 2002-03	174	30		17	186	180
2	FY 2003-04	186	31		19	198	192
3	FY 2004-05	198	283		20	461	330
4	FY 2005-06	461	220		46	635	548
5	FY 2006-07	635	149		64	721	678
6	FY 2007-08	721	167	87	72	902	811
7	FY 2008-09	902	183	12	90	1006	954
8	FY 2009-10	1006	115	69	101	1090	1048
9	FY 2010-11	1090	104	41	109	1127	1109
10	FY 2011-12	1127	57	25	113	1097	1112
11	FY 2012-13	1097	10	-113	110	884	990
12	FY 2013-14	884	79	67	88	941	912
13	FY 2014-15	941	140	67	94	1053	997
14	FY 2015-16	1053	140	92	105	1180	1117

#### Regulated rate Base (RRB)

3.8.28 Based on the above discussions, the Regulated Rate Base (RRB) upto FY 2015-16 is also revised as tabulated below:

Table-3.17p: Regulated Rate Base (Rs. Crore)

S.No.	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening balance of OCFA	1279								
2	Opening balance of WC	42								
3	Opening Balance of Accumulated Depreciation including AAD	223								
4	Opening Balance of Accumulated CC & Grants	25								
5	<b>RRB -Opening</b>	<b>1073</b>	<b>1383</b>	<b>1571</b>	<b>1735</b>	<b>1836</b>	<b>1845</b>	<b>1666</b>	<b>1765</b>	<b>1953</b>
6	Net Capitalisation during the year	247	275	187	207	91	23	140	225	216
7	Depreciation including AAD	53	90	101	109	113	110	88	94	105
8	CC and grants	9	15	22	58	10	9	27	26	16
9	Add: Depreciation on De-capitalised Assets	2	1	1	1	4	30	7	16	32
10	Change in WC	124	17	99	59	36	-113	67	67	92
11	ΔAB	186	171	65	41	-27	-65	32	122	126
12	<b>RRB - Closing</b>	<b>1383</b>	<b>1571</b>	<b>1735</b>	<b>1836</b>	<b>1845</b>	<b>1666</b>	<b>1765</b>	<b>1953</b>	<b>2171</b>
13	<b>RRB (i)</b>	<b>1290</b>	<b>1486</b>	<b>1703</b>	<b>1815</b>	<b>1858</b>	<b>1699</b>	<b>1749</b>	<b>1892</b>	<b>2108</b>

Weighted Average Cost of Capital (WACC)

3.8.29 Based on the rate of interest of debt given in table 3.17v as explained explanation given in Para 3.8.33 to 3.8.40 below the revised WACC for the Period FY 2007-08 to FY 2015-16 is tabulated as below:

Table-3.17q: Weighted Average Cost of Capital (WACC)

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
Average Equity	476	572	653	724	772	792	811	858	918
Average debt	811	954	1048	1109	1112	990	912	997	1117
Rate of debt for capex loans	10.77%	11.31%	11.42%	12.09%	14.09%	14.66%	14.43%	14.39%	14.14%
Rate of RoE	16%	16%	16%	16%	16%	16%	16%	16%	16%
WACC	12.70%	13.07%	13.18%	13.64%	14.87%	15.25%	15.17%	15.13%	14.98%

Return on Capital Employed (RoCE)

3.8.30 Return on Equity and Interest on Debt from FY 2002-03 to FY 2006-07:

Table-3.17r: RoE from FY 2002-03 to FY 2006-07 (Rs. Crore)

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Average Equity	122.4	135.3	202.5	310.2	389.3

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
2	RoE @16%	14.7	21.7	32.4	49.6	62.3
3	RoE approved	7.9	0.0	0.0	0.7	8.1
4	Difference	6.8	21.7	32.4	49.0	54.2

Table-3.17s: Interest on Debt from FY 2002-03 to FY 2006-07 (Rs. Crore)

S.No.	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Average Debt	180.1	192.4	329.8	548.1	677.9
2	Interest rate as approved in T.O. dated 23.02.2008	11.00%	9.94%	6.80%	8.35%	8.76%
3	Interest	14.9	19.1	22.4	45.8	59.4
4	Interest allowed	1.0	4.1	6.4	25.5	73.9
5	Difference	13.8	15.0	16.0	20.3	-14.6

3.8.31 The revised RoCE from FY 2007-08 to FY 2015-16 is tabulated below:

Table-3.17t: RoCE from FY 2007-08 to FY 2016-17 (Rs. Crore)

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
RRB(i)	1290	1486	1703	1815	1858	1699	1749	1892	2108
WACC	12.70%	13.07%	13.18%	13.64%	14.87%	15.25%	15.17%	15.13%	14.98%
RoCE @16%	163.9	194.2	224.4	247.5	276.4	259.2	265.3	286.4	315.8
RoCE allowed	79.7	105.9	126.6	139.9	179.9	168.8	179.4	211.7	231.4
Difference	84.2	88.3	97.8	107.6	96.5	90.3	85.9	74.7	84.4

3.8.32 The total impact on account of all capex related issues along with carrying cost upto FY 2015-16 is tabulated below:

Table 3.17u: Impact on account of capex related claims (Rs. Cr.)

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0	22	62	118	222	316	451	627	833	1,079	1,363	1,695	2,051	2,460
2	Additions	21	37	48	89	70	86	107	116	126	115	118	95	91	100
3	Closing Balance	21	58	110	207	292	401	558	743	959	1,194	1,481	1,790	2,142	2,560
4	Average	10	40	86	163	257	359	504	685	896	1,136	1,422	1,742	2,097	2,510
5	Rate of Carrying cost	9%	9%	9%	9%	9%	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	1	4	8	15	23	49	69	90	120	169	214	261	317	371
7	Grand Closing Balance	22	62	118	222	316	451	627	833	1,079	1,363	1,695	2,051	2,460	2,931

# Includes impact on all capex related items

The Petitioner requests the Hon'ble Commission to allow the aforesaid impact.

**Issue-A3: True-up of actual rate of interest:**

3.8.33 The Hon'ble Commission in Tariff Order dated February 23, 2008 ruled as under:

*"4.224 The Commission shall true-up the means of finance for the Control Period as the asset capitalisation is subject to true-up. The Commission may true-up the interest rates considered for new loans to be taken for capital investment and for working capital requirement, if there is a deviation in the PLR of the scheduled commercial banks by more than 1% on either side."*

3.8.34 However the Hon'ble Commission in Tariff Order dated August 26, 2011 did not true-up the interest rates considered for new loans despite of variation in PLR of scheduled commercial banks by more than 1%. Aggrieved from the same, the Petitioner challenged the aforesaid issue before this Hon'ble Tribunal in Appeal 62 of 2012.

3.8.35 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 & 62 of 2012) has ruled as under:

*"37. On perusal of the data submitted by the Appellant related to SBI PLR, it is clear that SBI PLR has deviated by more than 1% during the control period and accordingly the Commission was required to revise the rate of interest on loan and carry out the required true up. Further, despite admitting that true of Return on Capital Employed (RoCE) would done at the end of control period, the Delhi Commission has failed on both the counts. **The Delhi Commission is directed to revise the rate of interest on loan as well true up of the RoCE in its next tariff exercise. The issue is accordingly decided in favor of the Appellants.**"(Emphasis added)*

3.8.36 The Hon'ble Commission in Tariff Order dated September 29, 2015 undertook the true-up of rate of interest of loans by linking the same with SBI PLR rates. However true-up of interest rates of loans was required to be done based on variation of +/-1% in PLR of scheduled commercial banks and not SBI PLR. This fact was highlighted before the Hon'ble Commission during TVS held on July 21, 2017. The Petitioner vide letter dated July 26, 2017 provided the list of banks along with change in PLR during first Control Period. However the Hon'ble Commission in Tariff Order dated August 31, 2017 maintained the same stand as in Tariff Order dated September 29, 2015 and ruled as under:

*"3.28 The Commission has already clarified this issue in Tariff Order dtd. 29/09/2015 as follows and needs no further deliberation in this Tariff Order as the matter is sub-judice before Hon'ble APTEL"*



*“3.31 In view of the above direction of the Hon’ble APTEL, it is pertinent to state that the SBI PLR has not deviated from FY 2007-08 to FY 2010-11 by more than 1% on either side. Therefore the Commission has not revised the interest rate from FY 2007-08 to FY 2010-11. The Commission, as such, has considered the revision in interest rate in truing up of FY 2011-12, since the SBI PLR has deviated by more than 1% (14.50%-12.50%) in FY 2011-12.*

*3.32 The Commission had provisionally allowed the actual rate of interest for FY 2011-12. It is observed that the SBI PLR varied by 2.13% in FY 2011-12 over the previous year, while the DISCOM was provisionally allowed the interest rate at 4.91% above the normative interest rate for FY 2010-11 in the Tariff Order dated July 2013. The Commission has decided to revise the rate of interest applicable to FY 2011-12 based on actual variation in average rate for SBI PLR from FY 2010-11 to FY 2011-12 of 2.13% and revised rate of interest is 11.29% (9.16% + 2.13%). Further, in view of the Hon’ble APTEL’s direction in Appeal No. 36 of 2008 and Appeal No. 61 & 62 of 2012, the Commission has filed a Clarificatory Application before the Hon’ble APTEL, therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon’ble APTEL in the said application.”*

3.8.37 Further the Hon’ble ATE in Judgment dated February 10, 2015 (Appeal 171 of 2012) has ruled as under:

*“13.4 We find that the State Commission has considered interest rate for working capital as 11.62% and interest rate for capital at 11.25% for the control period 2012-13 to 2014-15. The Appellant has produced a letter from SBI dated 02.01.2012 showing working capital facilities sanctioned at an interest rate of 3.25% above base rate which works out to 13.25% p.a. with monthly interests. This letter was furnished to the State Commission by letter dated 21.05.2012. This has not been considered by the State Commission while deciding the rate of interest on working capital. In the submissions of the State Commission before us they have not denied receipt of this letter but have not given any explanation why the this letter was not considered by them while deciding the interest on working capital. There is also no explanation in the impugned order regarding fixing interest rate at 11.25% on working capital. We, therefore, direct the State Commission to true-up the interest rate on working capital for the years from 2012-13 to*

2014-15 in the true up of the accounts, based on the actual interest rates.”

3.8.38 Accordingly the truing-up of interest rates of loans from FY 2007-08 to FY 2015-16 is still pending.

3.8.39 The Petitioner has considered the actual rate of interest for the purpose of computation of RoCE from FY 2007-08 to FY 2015-16 which are as under:

**Table 3.17v: Actual rates of Interest**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Rate of Interest	10.77%	11.31%	11.42%	12.09%	14.09%	14.66%	14.43%	14.39%	14.14%

3.8.40 The financial impact on the Petitioner on account of the aforesaid issue has been considered in Table-3.17s of this Chapter. The computation has been explained in Para-3.8.18 to Para-3.8.32 of this Petition.

**Issue-A4: Repayment of loans:**

3.8.41 The Hon’ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*“102. In the light of above discussions we find force in the contentions of the Appellant and direct the Commission to re-evaluate the WACC considering the repayment of loans during the period and recomputed the RoCE payable to the Appellant. The issue is decided in favour of the Appellant.” (Emphasis added)*

3.8.42 The Petitioner has considered one-tenth of the outstanding balance of loan as repayment during the year. The same has been deducted from the loan balance for calculation of average debt during the year.

3.8.43 The financial impact on the Petitioner on account of the aforesaid issue has been considered in Table-3.17s of this Chapter. The computation has been explained in Para-3.8.18 to Para-3.8.32 of this Petition.

**Issue-5: Financing of Working Capital in debt-equity ratio of 70:30:**

3.8.44 The Hon’ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*“9. However, the Appellants have reiterated in written submission that the Respondent has still not implemented the direction of this Tribunal to consider the working capital in the Debt: Equity ratio of 70:30.*

*10. We are not inclined to involve ourselves in to fact finding and direct the Commission to implement our directions in letter and spirit.”*

3.8.45 The financial impact on the Petitioner on account of the aforesaid issue has been considered in Table-3.17s of this Chapter. The computation has been explained in Para-3.8.18 to Para-3.8.32 of this Petition.

**Issue-6: Truing-up of FY 2007-08 (11 Months) as per Regulation-12.1:**

3.8.46 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"25. In the light of categorical submission that required true up would be made, the Commission is directed to carry out the same in its next tariff exercise and allow the differential amount, if any, along with carrying costs."*

3.8.47 The Hon'ble Commission in Tariff Order dated July 23, 2014 stated as under:

*"3.107 As per the Policy Direction Period, the return on equity and interest on loan is linked to the change in the equity and debt based on the capital expenditure made by the Petitioner. Whereas, as per the MYT Regulations, 2007, the return on capital employed is based on the capitalization of the assets of the Petitioner.*

*3.108 The Petitioner has not provided details of the capital investment made during FY 2007-08 (11 months) on the basis of which the return on equity and debt is also required to be reviewed in line with the Policy Direction Period."*

3.8.48 The Petitioner vide letter dated October 1, 2014 submitted the audited accounts for first 11 months of FY 2007-08.

3.8.49 The Hon'ble Commission in Tariff Order dated September 29, 2015 allowed the depreciation during first 11 months of FY 2007-08 based on the depreciation rate derived from audited statement of first 11 months of FY 2007-08. The relevant excerpts are reproduced below:

*"3.61 The Petitioner has claimed the depreciation at the rate of 6.69% instead of 3.60% as provisionally approved by the Commission for 11 months. However, the Commission has considered the actual rate of Depreciation based on the Audited financial statements for FY 2007-08 in accordance with Regulation 12.1 of MYT Regulations 2007. The additional allowance on account of revision in the rate of depreciation is as follows:*

**Table 3.12: Provisionally approved Depreciation for FY 2007-08 (11 Months)**

Sl. No.	Particulars	Amount	Remarks
A	Depreciation as per audited financial statements for FY 2007-08	71.37	Audited financial statements
B	Opening GFA for FY 2007-08	1249.92	

C	Rate of Depreciation (%)	5.70	A/B
D	Rate of depreciation (%) as per MYT Regulations, 2007	3.60	
	Average Rate of depreciation (%) for FY		
E	2007-08 considering 11 months as per audited statements and 1 month as per MYT Regulations, 2007	5.53	$(C*11/12)+(D/12)$

”

3.8.50 Since the Hon’ble Commission changed its approach in the Tariff Order dated September 29, 2015, the Petitioner sought the actual rate of depreciation while claiming the impact in the Petition for Truing-up of FY 2014-15, Review of FY 2015-16 and Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff of FY 2016-17.

3.8.51 In Tariff Order dated August 31, 2017 while allowing the impact on account of ROE and Interest on loan, the Hon’ble Commission held as under:

*“3.76 The Commission had allowed Return on Equity and Interest on Loan on Net Capital Employed during FY 2007-08 in its Tariff Order dtd. 29/09/2015 in the form of RoCE. As per the Policy direction, the Petitioner is also eligible for Interest on Loan and Return on Equity for the funding requirement of Work in Progress (CAPEX) during FY 2007-08. Accordingly, the Commission has now allowed Interest on Loan and Return on Equity for funding requirement of Work in Progress (CAPEX) during FY 2007-08. The impact is indicated in*

*3.77 Table 92: Impact as approved by the Commission on account of implementation Hon’ble APTEL Judgments (Rs. Cr.).”*

3.8.52 Since the Hon’ble Commission has finally concluded that the impact of Truing-up of FY 2007-08 (first 11 months) is to be allowed as per Policy Direction Principles, the rate of depreciation is also required to be considered as adopted during Policy Direction Principle, i.e., 6.69% instead of 5.53% derived from audited statements of FY 2007-08 (11 Months).

3.8.53 Accordingly the depreciation has been computed as under:

**Table 3.17w: Depreciation during first 11 months of FY 2007-08**

S. No	Particulars	Amount (Rs. Cr.)
1	Opening GFA	1279.3
2	Rate of depreciation	6.69%
3	Depreciation for first 11 months	85.6
4	Depreciation allowed by DERC in Order dt. Sep 29, 2015	53.3
5	<b>Difference to be allowed now</b>	<b>32.3</b>

3.8.54 The depreciation allowed by the Hon'ble Commission during first 11 months of FY 2007-08 is tabulated below:

**Table 3.17x: Depreciation allowed by the Hon'ble Commission during first 11 months of FY 2007-08 in Tariff Order dated September 29, 2016**

(All in Rs. Cr.)

S. No	Particulars	11 Months	1 Month	Total
1	Opening GFA	865.5	865.5	865.5
2	Additions to asset during the year	270.4	270.4	270.4
3	De-capitalisation during the year	2.3	2.3	2.3
4	Net assets capitalised	268.2	268.2	268.2
5	<b>Closing GFA</b>	<b>1133.7</b>	<b>1133.7</b>	<b>1133.7</b>
6	Average GFA	999.6	999.6	999.6
7	Less: Average Consumer Contribution	64.7	64.7	64.7
8	Average GFA net of CC	934.9	934.9	934.9
9	Rate of depreciation	5.70%	3.60%	5.53%
10	<b>Depreciation</b>	<b>53.3</b>	<b>33.7</b>	<b>51.7</b>

3.8.55 Further it is submitted that the Hon'ble Commission despite revising the Employee and A&G Expenses during FY 2007-08 has still considered the employee and A&G Expenses from FY 2008-09 to FY 2010-12 on older base of FY 2007-08 which is no longer in existence. Regulation-5.4 of MYT Regulations, 2007 provides the formula for computation of Employee and A&G Expenses during the control period which clearly specifies that for the purpose of computation of Employee and A&G Expenses of subsequent year, inflation factor based on CPI and WPI ought to be applied on Employee and A&G Expenses determined for the previous year. It is further submitted that as per the methodology adopted by the Hon'ble Commission, the employee expenses approved for FY 2008-09 are lesser by Rs. 24 Crore as compared to the employee expenses approved for FY 2007-08 which means a reduction of 11% instead of inflation factor of 4.66%. Such a treatment is contrary to the MYT Regulations.

3.8.56 Accordingly, the Hon'ble Commission ought to have applied the inflation factor of 4.66% as determined for the control period on the revised employee and A&G Expenses of FY 2007-08 on y-o-y basis.

3.8.57 It is further submitted that the definition of "Base Year" and "Control Period" is clearly specified in MYT Regulations, 2007 which states as under:

*"2.1 In these Regulations, unless the context otherwise requires-*

*...*

*(d) "Base Year" means the **Financial Year immediately preceding first year of the Control Period** and used for purposes of these Regulations;*

- ...
- 9.. **“Control Period” means a multi-year period fixed by the Commission, from the date of issuing Multi Year Tariff order till 31<sup>st</sup> March 2011;**
- ...” (Emphasis added)**

A plain reading of the aforesaid definitions clearly states that the Control Period starts from the date of issuance of Multi Year Order, i.e., February 23, 2008 and base year is the financial year immediately preceeding first year of the control period, i.e., FY 2007-08. Since the Hon’ble Commission has revised the employee expenses of FY 2007-08, i.e., base year, the employee expenses ought to be revised for the period FY 2008-09 to FY 2011-12.

3.8.58 Accordingly the Hon’ble Commission may allow the additional Employee and A&G Expenses from FY 2008-09 to FY 2011-12 by applying inflation of 4.66% over the increase in O&M Expenses approved for FY 2007-08 as tabulated below:

**Table 3.17y: Increase in O&M Expenses from FY 2008-09 to FY 2011-12**  
(Rs. Crore)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
1	O&M Expenses for base year	28.43				
2	Inflation factor (%)		4.66%	4.66%	4.66%	4.66%
3	Incremental O&M Expenses		29.8	31.1	32.6	34.1

3.8.59 The impact on account of truing-up of first 11 months of FY 2007-08 along with carrying cost is tabulated below:

**Table 3.17z: Impact along with carrying cost**

(Rs. Crore)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	34.5	71.1	113.5	163.5	224.5	258.2	297.0	341.9
2	Additions	32.3	29.8	31.1	32.6	34.1				
3	Closing Balance	32.3	64.3	102.2	146.1	197.6	224.5	258.2	297.0	341.9
4	Average	16.1	49.4	86.6	129.8	180.6	224.5	258.2	297.0	341.9
5	Rate of Carrying cost %	13.68 %	13.7 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying cost	2.2	6.8	11.4	17.4	26.9	33.7	38.8	44.9	50.6
7	Grand closing balance	34.5	71.1	113.5	163.5	224.5	258.2	297.0	341.9	392.5



**Issue-A7: Revision in distribution loss from FY 2007-08 to FY 2010-11:**

3.8.60 The Hon'ble ATE in Judgment dated October 6, 2009 (Appeal 36 of 2008) has ruled as under:

*"32) There is however, no bar on the Commission considering the target that has been set and amend the relevant Regulation, if necessary. The target for MYT period needs to be set on the basis of losses at the beginning of the MYT Period and not on the basis of loss level on the date of privatisation when the policy target period began. The consequences of failure or success in reaching the loss reduction target have already been done by the licensee. Hence reference to the initial level of loss at the time of privatization is not necessary. The Commission may itself consider the plea of any amendment in the target set in this regard in case the appellant makes out a case. Therefore, we direct that the appellant may make an appropriate representation to the Commission in this regard within one month hereof and that if a representation is so made the Commission shall dispose it of in two months."*

3.8.61 In compliance with the aforesaid directions of the Hon'ble ATE, the Petitioner vide letter dated December 02, 2009 submitted its representation to the Hon'ble Commission, however without even admitting the same, the Hon'ble Commission vide Order dated July 17, 2014 rejected the Petition stating that the Petitioner has already availed opportunity to present its case on various issues which have been addressed in past tariff Orders.

3.8.62 The Petitioner challenged the aforesaid Order of the Hon'ble Commission in Appeal 231 of 214 before Hon'ble ATE. During the course of proceedings before Hon'ble ATE, the Hon'ble Commission suo-moto without giving any opportunity to the Petitioner to present its case, reviewed its earlier order dated July 17, 2014 and passed another order on April 20, 2015 wherein the prayer to revise the distribution loss was rejected.

3.8.63 The Hon'ble Commission in Order dated April 20, 2015 did not implement the direction given by Hon'ble ATE in its real intended scope. The Petitioner has challenged the same in Appeal No. 156 of 2015. Without pre-judice to the Appeal, it is submitted that the direction given by Hon'ble ATE in Judgment dated October 6, 2009 was to:

- a) Consider the plea for necessary amendment in distribution loss based on representation of DISCOMs;
- b) Amend the Regulations if required.

3.8.64 It is respectfully submitted that the Petitioner's prayer was not to change the AT&C Loss target for FY 2010-11 but to revise the inter-se (y-o-y reduction) AT&C Loss target /distribution loss target from FY 2007-08 to FY 2009-10

based on actual distribution loss for FY 2006-07 as the distribution loss target set for FY 2007-08 was not realistic which is evident from the following statement of the Hon'ble Commission in Tariff Order dated February 23, 2008:

*"3.148 In the MYT petition, the Petitioner had claimed total power purchase of 5297 MU, 3059MU as unit billed and units realized as 3230 MU. It has shown **distribution losses of 42.3%**, collection efficiency of 105.58% and AT&C loss level of 39.03%.*

.....

*4.32 Further, the Commission has assumed collection efficiency of 99.00%, 99.25% 99.50% and 99.50% for current dues for FY08, FY09, FY10 and FY11 respectively and derived distribution losses of 34.11%, 29.99%, 25.89% and 21.61% for the FY08, FY09, FY10 and FY11 respectively. The AT&C loss reduction and distribution loss reduction trajectory approved by the Commission are summarised in the table below:*

**Table 51: Commission Approved AT&C and Distribution Loss Reduction Trajectory**

Particular	FY08	FY09	FY10	FY11
AT & C loss target	34.77%	30.52%	26.26%	22.00%
A T & C loss Reduction over previous year	4.26%	4.26%	4.26%	4.26%
Distribution loss target	34.11%	29.99%	25.89%	21.61%
Collection Efficiency	99.00%	99.25%	99.50%	99.50%

"

3.8.65 As evident from above, the Hon'ble Commission has set distribution loss target of 34.11% (i.e. reduction of 8.19% to be achieved in one month, i.e., March 2008) as against actual distribution loss of 42.3% achieved by the Petitioner during FY 2006-07.

3.8.66 The Loss targets approved by the Hon'ble Commission vis-à-vis proposed by the Petitioner from FY 2007-08 to FY 2010-11 as sought in the aforesaid proposal are tabulated below:

**Table 3.17aa: Proposal for revision in Distribution Loss**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11
<b>A</b>	<b>As per MYT Order dated Feb 23, 2008</b>				
<b>a</b>	AT&C loss Reduction Target	34.77%	30.52%	26.26%	22.00%
<b>b</b>	Distribution Loss	34.11%	29.99%	25.89%	21.61%
<b>c</b>	Collection Efficiency	99.00%	99.25%	99.50%	99.50%
<b>B</b>	<b>Revised Proposal</b>				
<b>a</b>	AT&C loss Reduction Target	37.76%	32.47%	27.15%	22.00%
<b>b</b>	Distribution Loss	37.13%	31.96%	26.78%	21.61%
<b>c</b>	Collection Efficiency	99.00%	99.25%	99.50%	99.50%



As evident from the above, the Petitioner is not praying to change the AT&C loss Target of FY 2010-11 but to revise the targets from FY 2007-08 to FY 2009-10 based on distribution loss so to have realistic AT&C Loss Targets.

3.8.67 The financial impact on the Petitioner on the aforesaid issue, due to non-implementation of Judgment of this Hon'ble Tribunal is tabulated below:

**Table 3.17ab: Financial Impact due to revision in targets**

As per DERC	BYPL			
	FY 08	FY 09*	FY 10	FY 11
Energy Input at DISCOM Periphery(MU)	5,285	5281	5,708	6,012
Units Realised (MU)	3,687	3,904	4,320	4,692
ABR (Rs. / unit)	4.40	4.53	4.53	4.61
Collection (excluding E. Tax)	1,622	1,768	1,959	2,162
AT & C loss achieved	30.23%	26.08%	24.32%	21.95%
AT & C Incentive level as per MYT Order	34.77%	30.52%	26.26%	22.00%
Over Achievement / (Under achievement)	4.54%	4.44%	1.94%	0.05%
Over/underachievement (Rs. Cr.)	105.5	106.2	50.1	1.4
BYPL's share (Rs. Cr.)	52.8	53.1	25.1	0.7
<b>Total benefit on account of overachievement (Rs. Cr.)</b>	<b>131.6</b>			

As per BYPL's proposal	BYPL			
	FY 08	FY 09*	FY 10	FY 11
Energy Input at DISCOM Periphery(MU)	5,285	5,281	5,708	6,012
Units Realised (MU)	3,687	3,904	4,320	4,692
ABR (Rs. / unit)	4.40	4.53	4.53	4.61
Collection (excluding E. Tax)	1,622	1,768	1,959	2,162
AT & C loss achieved	30.23%	26.08%	24.32%	21.95%
AT & C Incentive level as per proposal	37.76%	32.47%	27.15%	22.00%
Over Achievement / (Under achievement)	7.53%	6.39%	2.83%	0.05%
Total benefit on account of overachievement (Rs. Cr.)	175.0	152.8	73.2	1.4
BYPL's share (Rs. Cr.)	87.5	76.4	36.6	0.7
<b>Total benefit on account of overachievement (Rs. Cr.)</b>	<b>201.2</b>			

*\*after correcting apparent errors as sought for in the Petition for review/revision of Tariff Order dated 31.08.2017 filed before the Hon'ble Commission*

Table 3.17ac: Financial Impact including carrying cost (Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	37.1	67.2	88.2	100.1	114.9	132.2	152.1	175.1
2	Additions	34.8	23.3	11.5	0					
3	Closing Balance	34.8	60.5	78.7	88.2	100.1	114.9	132.2	152.1	175.1
4	Average	17.4	48.8	72.9	88.2	100.1	114.9	132.2	152.1	175.1
5	Rate of Carrying cost	13.68 %	13.75 %	13.1 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying cost	2.4	6.7	9.6	11.8	14.9	17.3	19.8	23.0	25.9
7	Grand closing balance	37.1	67.2	88.2	100.1	114.9	132.2	152.1	175.1	201.0

The Petitioner requests the Hon'ble Commission to approve the aforesaid impact on account of revision in AT&C Loss trajectory for FY 2007-08 to FY 2009-10.

**Issue-A8: Truing-up of AT&C loss for FY 2008-09:**

3.8.68 On 20.11.2017, the Petitioner has filed a Petition for review/revision/clarification in the Tariff Order dated 31.08.2017 before the Hon'ble Commission. Based on the submissions made in the said Petition, the Petitioner requests the Hon'ble Commission to approve the impact of AT&C loss for FY 2008-09 as follows:

Table 3.17ad: Impact of AT&amp;C loss for FY 2008-09 (Rs. Cr.)

Particulars	Approved by DERC in T.O. Dated 26.08.2011	Revised based on revised computation
Amount Realized	1803.2	1767.9
Add: Prior Period Income (FY 2007-08)	3.2	3.2
Add: Prior Period Interest	0.0	0.0
Less: DVB Arrears Collected by DPCL	3.9	3.9
<b>Total Collections (incl. E Tax)</b>	1802.6	1767.3
Less: Benefit to be retained by the Petitioner	0.0	53.1
Less: Benefit to be transferred to Contingency Reserve	0.0	53.1
Total revenue available towards ARR	1802.6	1661.1
Less: LPSC (2008-09) considered as Non Tariff Income	20.7	20.7
Less: Prior Period Income (2007-08) considered as Non Tariff Income	3.2	3.2

Particulars	Approved by DERC in T.O. Dated 26.08.2011	Revised based on revised computation
Less: Prior Period Interest considered as Non Tariff Income	0.0	0.0
Less: E-Tax	72.0	72.0
Revenue available for expenses	1706.6	1565.2
Difference	141.5	
Impact Amount allowed in T.O. Dated 31.08.2017	38.6	
<b>Difference to be allowed</b>	<b>102.9</b>	

3.8.69 The Petitioner requests the Hon'ble Commission to allow the impact of AT&C loss for FY 2008-09 after rectifying the errors highlighted in the Petition filed by the Petitioner on 20.11.2017 and allow the aforesaid impact along with carrying cost in the Tariff Order for FY 2018-19.

**Issue-A9: Effect of 6<sup>th</sup> pay commission for non-DVB Employees:**

3.8.70 The Hon'ble ATE in Judgment dated May 15, 2015 (RP No. 13 of 2015) has ruled as under:

*"7. The Review Petitioner/Appellant had also furnished the comparison between average salary of FRSR employees and non-FRSR employees showing that the average salary of non-FRSR employees is lower than FRSR employees. It is also stated that the average cost to company (CTC) of non-FRSR employees even after accounting for additional emoluments given in view of implementation of Pay Commission Report for FRSR employees, the average CTC of non-FRSR employees is less than average CTC of FRSR employees.*

*In view of above we allow the Review Petition. Delhi Commission will consider the issue as per the judgment of this Tribunal in 2009 ELR (APTEL) 880."*

3.8.71 The Hon'ble Commission in Tariff Order dated August 31, 2017 had not implemented the aforesaid directions of the Hon'ble ATE by stating that the matter is sub-judice in Appeal No. 290/2015 and Clarificatory Application filed before Hon'ble APTEL. It is humbly submitted that since the clarificatory application is already disposed off by the Hon'ble ATE vide judgment dated October 31, 2017, the Petitioner requests the Hon'ble Commission to implement the same in the next Tariff Order.

3.8.72 The Petitioner has explained the computation of impact on account of 6th pay commission in subsequent paragraphs.

3.8.73 The Hon'ble Commission vide Tariff Order dated February 23, 2008 (Table-73)

has allowed the following employee expenses from FY 2005-06 to FY 2006-07 as under:

**Table 3.17ae: Employee expenses approved for FY 2005-06 and FY 2006-07**

(Rs. Cr.)

S. No	Particulars	FY 06	FY 07
1	Net Employee Expenses#	92.95	107.08
2	Employee Expenses pertaining to DVB Employees	66.71	76.85
3	Employee Expenses pertaining to Non-DVB Employees	26.24	30.23

# Excludes impact of sixth pay commission

3.8.74 Further the Hon'ble Commission vide Tariff Order dated August 26, 2011 (Table-43) has allowed the following employee expenses from FY 2007-08 to FY 2010-11:

**Table 3.17af: Employee Expenses approved from FY 2007-08 to FY 2010-11**

(Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11
1	Net Employee Expenses#	112.07	117.3	122.76	128.48

# Excludes impact of sixth pay commission

3.8.75 Since the bifurcation of employee expenses from FY 2007-08 to FY 2010-11 has not been provided, the petitioner has applied the same ratio as provided for FY 2006-07 for bifurcation of employee expenses between DVB and Non-DVB Employees as under:

**Table 3.17ag: Bifurcation of Employee Expenses into DVB and Non-DVB Employee expenses approved during FY 2006-07**

(Rs. Cr.)

S. No	Particulars	FY 07	%
1	Net Employee Expenses#	107.08	
2	Employee Expenses pertaining to DVB Employees	76.85	72%
3	Employee Expenses pertaining to Non-DVB Employees	30.23	28%

**Table 3.17ah: Bifurcation of Employee expenses into DVB and Non-DVB Employee from FY 08 to FY 11**

(Rs. Cr.)

S. No	Particulars	Reference	FY08	FY09	FY10	FY11
1	Total salary	Table-44 of TO dt. Aug 26, 2011	112.1	117.30	122.76	128.48
2	Salary of FRSR	78% x 1	80.4	84.2	88.1	92.2
3	Salary for Non FRSR	28% x 2	31.6	33.1	34.7	36.3

3.8.76 The Hon'ble Commission vide Tariff Order dated August 26, 2011 (Table-35 and Table-43) has allowed the following amount on account of arrears due to sixth pay commission for DVB Employees:

**Table 3.17ai: Arrears approved on account of 6th pay commission from FY 07 to FY 11** (Rs. Cr.)

S. No	Particulars	FY 06	FY 07	FY08	FY09	FY10	FY11
1	Arrears on account of 6th pay Commission	5.71	23.07	24.14	25.27	26.45	27.68

3.8.77 The impact of increase in salary of non-DVB Employees on account of 6th pay commission from FY 2007-08 to FY 2010-11 has been computed below:

**Table 3.17aj: Impact of increase in salary of non-DVB Employees on account of 6th pay commission from FY 2007-08 to FY 2010-11** (Rs. Cr.)

S. No	Particulars	FY06	FY07	FY08	FY09	FY10	FY11	Reference
1	Total salary	93.0	107.1	112.1	117.3	122.8	128.5	A
2	Effect of 6th pay	5.7	23.1	24.1	25.3	26.5	27.7	B
3	Salary of FRSR	66.7	76.9	80.4	84.2	88.1	92.2	C
4	Salary for Non FRSR	26.2	30.2	31.6	33.1	34.7	36.3	D
5	<b>Effect of 6th pay on non FRSR</b>	<b>2.2</b>	<b>9.1</b>	<b>9.5</b>	<b>9.9</b>	<b>10.4</b>	<b>10.9</b>	<b>E=B/C*D</b>

3.8.78 Further, the Hon'ble Commission in Tariff Order dated August 26, 2011 has applied an inflation of 4.66% on employee expenses approved for FY 2010-11 (which includes impact of 6th pay commission for DVB Employees) to arrive at employee expenses for FY 2011-12. Accordingly, the effect of 6th pay on non-FRSR Employees during FY 2011-12 is tabulated below:

**Table 3.17ak: Impact of increase in salary of non-DVB Employees on account of 6th pay commission during FY 2011-12** (Rs. Cr.)

S. No	Particulars	FY11	Inflation Factor	FY12	Reference
1	Total salary	128.5	4.66%	134.5	A
2	Effect of 6th pay	27.7	4.66%	29.0	B
3	Salary of FRSR	92.2	4.66%	96.5	C
4	Salary for Non FRSR	36.3	4.66%	38.0	D
5	<b>Effect of 6th pay on non FRSR</b>	<b>10.9</b>		<b>11.4</b>	<b>E=B/C*D</b>

3.8.79 The impact on account of the increase in the salary of non-DVB Employees

due to the 6<sup>th</sup> pay commission from FY 2007-08 to FY 2011-12 has been computed along with carrying cost up to FY 2013-14 is as under:

**Table 3.17a: Impact on account of 6<sup>th</sup> pay commission along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	2.3	12.0	23.8	37.7	53.8	72.6	95.6	110.0	126.5	145.6
2	Additions	2.2	9.1	9.5	9.9	10.4	10.9	11.4				
3	Closing Balance	2.2	11.4	21.5	33.8	48.1	64.7	84.0	95.6	110.0	126.5	145.6
4	Average	1.1	6.9	16.8	28.8	42.9	59.2	78.3	95.6	110.0	126.5	145.6
5	Rate of Carrying Cost	9.0 0%	9.00 %	13.6 8%	13.7 5%	13.11 %	13.3 8%	14.8 8%	15.0 3%	15.01 %	15.13 %	14.80 %
6	Carrying Cost	0.1	0.6	2.3	4.0	5.6	7.9	11.6	14.4	16.5	19.1	21.6
7	Grand Closing Balance	2.3	12.0	23.8	37.7	53.8	72.6	95.6	110.0	126.5	145.6	167.2

3.8.80 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the Tariff Order for FY 2018-19.

**Issue-A10: Revision in AT&C Loss Target of FY 2011-12**

3.8.81 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"72. In the light of above discussions we direct the Delhi Commission to refix the AT&C loss levels for the FY 2011-12 as per its letter dated 8.3.2011 and give consequential relief to the Appellants. The issue is decided in favour of the Appellants."*

3.8.82 The Hon'ble Commission vide letter dated March 08, 2011 fixed the AT&C Loss Target for FY 2011-12 as under:

*"The AT&C loss target for FY 2011-12 will be the lower of the following two figures.*

*i. Actual AT&C loss for 2010-11: &*

*ii. Reduction at 1% over the AT&C target for FY 2010-11"*

3.8.83 However the Hon'ble Commission in Tariff Order dated September 29, 2015 has stated that a Clarificatory petition has been filed on the said issue which is pending adjudication before Hon'ble ATE. The same stand was taken by the Hon'ble Commission in Tariff Order dated August 31, 2017. It is humbly submitted that since the said clarificatory Application has already been

disposed off by the Hon'ble ATE vide judgment dated October 31, 2017, Hon'ble Commission is requested to kindly implement the directions of the Hon'ble ATE in terms of the judgment in Appeal 62 of 2012 which held that the AT&C loss target for FY 2011-12 shall be refixed at 21% and not 18% as considered by the Hon'ble Commission in case of the Petitioner.

3.8.84 The Hon'ble Commission in Tariff Order dated July 31, 2013 had trued-up actual AT&C Loss for FY 2011-12 as 22.07% and computed the under-achievement of Rs. 129 Crore from the AT&C Loss Target of 18%.

3.8.85 The under-achievement ought to be recomputed as under:

**Table 3.17am: Impact due to revision in AT&C Loss Target for FY 2011-12**

S. No	Particulars	UoM	Target	Actuals
1	AT&C Loss	%	21.00%	22.07%
2	Over achievement/ (Under achievement)	%	-1.07%	
3	Energy Input	MU	6203.2	6203.2
4	Units realised	MU	4900.6	4834.2
5	Average Billing Rate	Rs./ kWh	5.1	5.1
6	Amount realised	Rs. Cr.	2504.2	2470.3
7	Under-achievement	Rs. Cr.		33.9
8	Considered in TO dt. July 31, 2013	Rs. Cr.		129.1
9	<b>Impact to be allowed</b>	<b>Rs. Cr.</b>		<b>95.2</b>

3.8.86 It is requested that the above amount ought to be allowed along with carrying cost as under:

**Table 3.17an: Impact due to revision in AT&C Loss Target for FY 2011-12 along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	102.3	117.6	135.3	155.7
2	Additions	95.2				
3	Closing Balance	95.2	102.3	117.6	135.3	155.7
4	Average	47.6	102.3	117.6	135.3	155.7
5	Rate of Carrying cost	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	7.1	15.4	17.7	20.5	23.0
7	Grand closing balance	102.3	117.6	135.3	155.7	178.8

3.8.87 Accordingly the Petitioner requests the Hon'ble Commission to allow the impact on account of revision in AT&C Loss of FY 2011-12.



**Issue-A11: Non-revision of AT&C Loss for FY 2012-13 and FY 2015-16:**

3.8.88 The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 177 and 178 of 2012) has ruled as under:

*"30.12 The State Commission has proposed AT&C loss reduction 1.27% below the target fixed for 2011-12(15%). Now the AT&C loss target for FY 2011-12 has to be refixed to 16% for BRPL as per the decision of this Tribunal in Appeal no. 62 of 2012. The State Commission has fixed AT&C loss target for 2014-15 as 12.5% which would mean a loss reduction of 3.5% in the control period of 3 years which seems reasonable and can be distributed to 1.05% reduction in 2012-13, 1.2% in 2013-14 and 1.25% in 2014-15 over the target of previous year i.e. AT&C loss target of 14.99%, 13.75% and 12.5% respectively. Lower target for 2012-13 has been fixed as the impugned order was passed on 13.07.2012, about 3½ months after the commencement of FY 2012-13. In this way, the target for FY 2014-15 will remain the same as decided by the Commission in the impugned order. Considering the performance in the past and the actual AT&C loss level, the above loss reduction trajectory will be reasonable. According decided.*

*30.13...When the target level for FY 2011-12 has to be refixed, the AT&C loss targets for FY 2012-13 to 2014-15 have also to be refixed by the State Commission accordingly."*

3.8.89 The directions of Hon'ble ATE regarding revision of AT&C loss targets for FY 2012-13 to FY 2014-15 and FY 2011-12 in Judgment dated March 2, 2015 (Appeal 178 of 2012) and November 28, 2014 (Appeal 62 of 2012) are as under:

- a) AT&C Loss for FY 2011-12 to be re-determined in terms of letter dated March 8, 2011 which states that the loss level for FY 2011-12 shall be lower of actual AT&C Loss for FY 2010-11 or the AT&C Loss target for FY 2010-11 minus 1%. Hence the AT&C loss for FY 11-12 works out to 21% (Target of 2010-11 at 22% -1%)
- b) AT&C Loss from FY 2012-13 to FY 2014-15 to be re-determined based on the revised target for FY 2011-12.

3.8.90 Further, the Hon'ble Commission in teh Tariff Order dated September 29, 2015 has approved the AT&C loss target for FY 2015-16 based on the loss reduction trajectory approved for FY 2012-13 to FY 2014-15 i.e. at 13.33% (Target for FY 2014-15 at 14.50% -1.17%), the same also ought to be revised based on the revised targets for FY 2011-12 and FY 2012-13 to Fy 2014-15. Accordingly, the AT&C Loss Target for FY 2012-13 to FY 2015-16 works out as



under:

**Table 3.17ao: AT&C loss target for FY 2012-13 to FY 2015-16**

S.No.	Particulars	DERC	Submission based on ATE judgment
1	AT&C Loss for FY 2011-12 (base year)	18.00%	21.00%
2	AT&C Loss for FY 2012-13	16.82%	19.62%
3	AT&C Loss for FY 2013-14	15.66%	18.27%
4	AT&C Loss for FY 2014-15	14.50%	16.92%
5	AT&C Loss for FY 2015-16	13.33%	15.55%

3.8.91 The impact on account of revision in AT&C loss target from FY 2012-13 and FY 2013-14 is tabulated below:

**Table 3.17ap: Impact on account of revision of AT&C Loss Target from FY 2012-13 to FY 2015-16 (Rs. Crore)**

Particulars	FY 12-13		FY 13-14		FY 14-15		FY 15-16	
	Revised Target	Actual	Revised Target	Actual	Revised Target	Actual	Revised Target	Actual
AT&C loss (%)	19.62%	21.14%	18.27%	22.19%	16.92%	19.44%	15.55%	15.96%
Over/under achievement (%)		-1.52%		-3.92%		-2.52%		-0.41%
Units Input (MU)		6333		6577		6717		6780
ABR (Rs./Unit)		6.31		6.85		7.38		7.64
Impact on account of Underach. (Rs. Cr)		-61		-177		-125		-21
Underach. Approved in respective True up Orders		-173		-294		-245		-136
Impact to be allowed		112.0		117.6		119.8		115.1

3.8.92 The aforesaid impact along with carrying cost is tabulated below:

**Table 3.17aq: Impact due to revision of AT&C Loss Target from FY 2012-13 to FY 2015-16 along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	120.4	264.9	433.9
2	Additions	112.0	117.6	119.8	115.1
3	Closing Balance	112.0	238.0	384.7	548.9
4	Average	56.0	179.2	324.8	491.4
5	Rate of Carrying cost	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	8.4	26.9	49.1	72.7
7	Grand closing balance	120.4	264.9	433.9	621.7

3.8.93 Accordingly the Petitioner requests the Hon'ble Commission to allow the

aforesaid impact in the Tariff Order for FY 2018-19.

**Issue-A12: To allow increase in employee expenses corresponding to increase in consumer base:**

3.8.94 In the Petitioner's licensed area of supply, consumer base has increased by 37% in FY 12 as compared to FY 2006-07 (FY 07: 8.9 Lakhs, FY 12: 12.3 Lakhs) and units billed have grown by 58 % in FY 2011-12 as compared to FY 2006-07 (Units billed 2007: 359 MU, 2012: 4844 MU). The Petitioner is obligated under the extant regulatory framework to maintain standards in supply of electricity and to retain AT & C loss levels effectively. As per the Hon'ble ATE order, the Hon'ble Commission is required to factor in the increase in employee cost required due to increase in consumer base.

3.8.95 The Hon'ble ATE in Judgment dated October 6, 2009 (Appeal No. 36 of 2008) has held that the Delhi Commission should true up employee expense to the extent of increase caused by increase in consumer base. The relevant extracts are reproduced below:

*"74) Having gone through the impugned order we do find that the Commission has not considered the issue of possible increase in the number of employees consequent on increase in the consumer base. Nor has the Commission ruled on the Petitioner's proposal to increase the salaries etc. The Commission has nonetheless assured to true up the employees expenses subject to prudence check. The Commission shall also take care of the related carrying cost. This should satisfy the Petitioner.*

*75) ... We thus conclude the issue of employees' expenses by saying that the: The Commission shall allow the expenses incurred towards the retirement benefit of SVRS optees pending decision of the Actuarial Arbitration Tribunal and shall true up the employee expenses to the extent of increase caused by increase in the consumer base..... "*

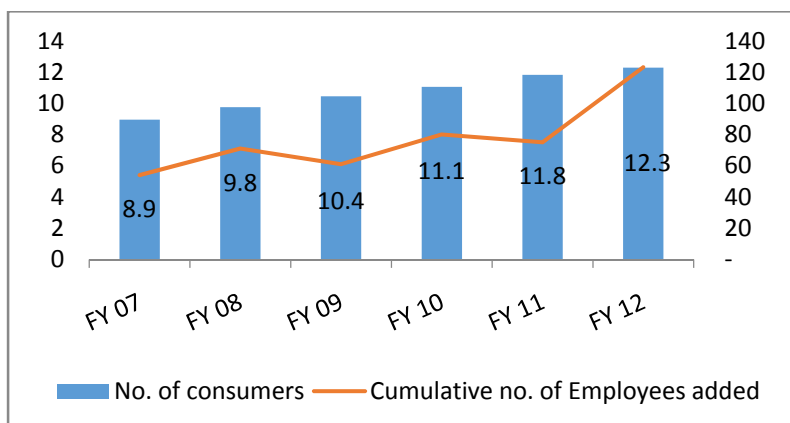
3.8.96 The Hon'ble Commission in Tariff Order dated July 31, 2013 stated as under:

*"3.95 As regard true up of the employees expenses to the extent of increased cost by increase in consumer base and salary hike comparable to sixth pay Commission's recommendations for employees other than erstwhile DVB employees, the Commission has initiated a benchmarking exercise for employee expenses taking into account the increased consumer base as well as increase in sales. This would also take into account the salary hike of employees other than the erstwhile DVB employees. The impact will be given once the benchmarking exercise is completed."*

3.8.97 The aforesaid benchmarking exercise has not found place in any of the tariff orders issued after July 31, 2013.

3.8.98 It is further submitted that the Petitioner has added considerable number of employees during the MYT Control period to cater to the needs of the business growth as shown in the figure below:

**Figure 1: Additional recruitment to meet business growth**



3.8.99 As per the DERC MYT Regulations, sales is an uncontrollable factor because the licensee has a universal obligation to provide electricity to any consumer. Therefore to meet with the business growth, the licensee is forced to employ additional manpower. Under this circumstance, the Hon'ble Tribunal had directed the Hon'ble Commission to true up the employees expenses to the extent of increased cost by increase in consumer base. The Hon'ble Commission has already trued up the consumer base of the Petitioner for the First MYT Control Period but is yet to implement the judgment of the Hon'ble ATE. The impact of increase in consumer base on the employee cost is estimated below:

**Table 3.17ar: Increase in employee expenses from FY 08 to FY 12**

(Rs. Crore)

S. No	Particulars	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
1	Employee Expenses in the base year	139					
2	No. of Consumers served during base year	894,928					
3	Employee Expenses per consumer in the base year	1,556					
4	Escalation Factor		4.66%	4.66%	4.66%	4.66%	4.66%
5	Increase in employee expenses over first MYT Control Period after applying escalation factor		1,628	1,704	1,783	1,867	1,954

S. No	Particulars	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12
6	Actual number of consumers served during first Control Period		975,043	1,044,821	1,105,289	1,181,539	1,227,755
7	Increase in number of consumers served y-o-y basis		80,115	69,778	60,468	76,250	46,216
8	<b>Increase in employee Expenses based on number of consumers</b>		<b>13.0</b>	<b>11.9</b>	<b>10.8</b>	<b>14.2</b>	<b>9.0</b>

**Table 3.17as: Impact on account of increase in employee expenses along with carrying cost**

(Rs. Crore)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	13.9	28.6	43.8	64.8	84.2	96.8	111.4	128.2
2	Additions	13.0	11.9	10.8	14.2	9.0				
3	Closing Balance	13.0	25.8	39.3	58.0	73.9	84.2	96.8	111.4	128.2
4	Avg. Balance	6.5	19.9	34.0	50.9	69.4	84.2	96.8	111.4	128.2
5	Rate of Carrying Cost	13.68 %	13.75 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying Cost	0.9	2.7	4.5	6.8	10.3	12.7	14.5	16.8	19.0
7	Grand Closing Balance	13.9	28.6	43.8	64.8	84.2	96.8	111.4	128.2	147.2

3.8.100 In view of the aforesaid, the Hon'ble Commission is required to expeditiously implement the Hon'ble ATE judgment and to true-up the employee expenses to the extent of increased cost by increase in consumer base along with carrying costs.

**Issue-A13: Payment to VRS Optees:**

3.8.101 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"14. Similarly, in view of specific assertion made by the Delhi Commission in the subsequent order, the Delhi Commission is directed to allow the payments made by the Appellant to VRS optee employees on ad hoc basis and adjust the same after the decision of the Actuarial Tribunal."*

3.8.102 The Petitioner vide letter dated April 24, 2015 and August 17, 2015 provided the documentary proofs, i.e., bank statement of Trust and the Petitioner to substantiate its claims towards payments made to VRS optees. The same has also been acknowledged by the Hon'ble Commission in its Tariff Order

dated September 29, 2015. The Hon'ble Commission in Tariff Order dated August 31, 2017 has relied upon its finding in the Tariff Order dated September 29, 2015 and stated that the view on the impact would be taken after receipt of Hon'ble ATE judgment in the Clarificatory Application filed by the Hon'ble Commission. It is humbly submitted that since the said clarificatory Application has already been disposed off by the Hon'ble ATE vide judgment dated October 31, 2017, Hon'ble Commission is requested to kindly allow the impact along with carrying cost in the Tariff Order as tabulated below:

**Table 3.17at: Impact on account of payment to VRS optees along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	47.7	70.2	63.9	72.6	83.6	96.1	110.6	127.3
2	Additions	44.6	14.9	-14.6	0.2	0.2	0.0			
3	Closing Balance	44.6	62.6	55.6	64.0	72.8	83.6	96.1	110.6	127.3
4	Average	22.3	55.1	62.9	63.9	72.7	83.6	96.1	110.6	127.3
5	Rate of Carrying Cost	13.68 %	13.75 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying Cost	3.1	7.6	8.2	8.6	10.8	12.6	14.4	16.7	18.8
7	Grand Closing Balance	47.7	70.2	63.9	72.6	83.6	96.1	110.6	127.3	146.1

**Issue-A14: R&M and A&G Expenses from FY 2004-05 to FY 2006-07:**

3.8.103 The Hon'ble ATE in Judgment dated October 10, 2009 (Appeal 36 of 2008) has ruled as under:

"91...

*We are of the opinion that R&M expenses properly incurred should be approved and in case there is any gap between the demand made by the appellant and the amount sanctioned by the Commission, the Commission should enter into the exercise of a prudent check and grant the approval to such expenses....*

...

97...

*It appears that the Commission is yet to true up the accounts for the year 2004-05 on the basis of the audited accounts and whenever such truing up is done the appellant's grievance of denial of administrative and general expenses of 2004-05 should disappear."*

3.8.104 The Hon'ble Commission in Tariff Order dated July 23, 2014 has allowed the

R&M and A&G Expenses from FY 2004-05 to FY 2006-07 based on benchmarking with other DISCOMs of Delhi.

3.8.105 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"22. We agree with the contentions made by the Appellants that true up for the policy direction period cannot be carried out on the basis of benchmarking concept muted in MYT Regulations. **The Commission is directed to implement the direction of this Tribunal in true letter and spirit and do not involve in inventing any new methodology to circumvent to such directions.** The issue is decided in favour of the Appellants. " (Emphasis added)*

3.8.106 The Hon'ble Commission in Tariff Order dated September 29, 2015 stated as under:

*"3.48 In compliance of the direction of Hon'ble APTEL in Appeal No. 61 and 62 of 2012, the Commission has appointed a Chartered Accountant firm empanelled with C&AG for independent verification of the claims of the Petitioner in respect of R&M and A&G expenses for FY 2004-05 to FY 2005-06. Final impact will be considered based on the report of Chartered Accountant firm appointed by the Commission."*

3.8.107 The Hon'ble Commission in Tariff Order dated August 31, 2017 claimed to allow the actual R&M and A&G Expenses from FY 2005-06 to FY 2006-07 but disallowed even the earlier allowed R&M Expenses for FY 2004-05 based on benchmarking in Tariff Order dated 23.07.2014. The relevant para is reproduced below:

*"3.124 The Commission has indicated in its Tariff Order dtd. 29/09/2015 that in compliance of the direction of Hon'ble APTEL in Appeal No. 61 and 62 of 2012, the Commission has appointed a Chartered Accountant firm empanelled with C&AG for independent verification of the claims of the Petitioner in respect of R&M and A&G Expenses for FY 2004-05 to FY 2005-06. The report has been submitted by the firm and approved by the Commission.*

*3.125 Accordingly, the incremental impact based on the report of the firm on R&M and A&G Expenses from FY 2004-05 to FY 2006-07 is as follows:*

**Table 39: Impact on R&M and A&G Expenses from FY 2004-05 to FY 2006-07 (Rs. Cr.)**

FY	Particulars	Petitioner's Submission	Trued up as per Consultant's Report	Approved in earlier TO	Difference
2004-05	Repair & Maintenance	46.88	46.88	50.46	-3.58

<b>FY</b>	<b>Particulars</b>	<b>Petitioner's Submission</b>	<b>Trued up as per Consultant's Report</b>	<b>Approved in earlier TO</b>	<b>Difference</b>
	Administrative & General Expenses	16.62	16.62	21.77	-5.15
2005-06	Repair & Maintenance	55.48	55.48	48.06	7.42
	Administrative & General Expenses	29.68	29.68	29.69	-0.01
2006-07	Repair & Maintenance	47.84	47.84	45.59	2.25
	Administrative & General Expenses	40.1	40.1	21.77	18.33

“

3.8.108 It is humbly submitted that though the Consultant's report was shared with the Petitioner by the Hon'ble Commission, however, how the numbers trued-up by the Hon'ble Commission in the abovementioned table are computed is neither mentioned in the Report nor explained in the Tariff Order.

3.8.109 A Comparison of R&M Expenses and A&G Expenses allowed by the Hon'ble Commission during FY 2004-05 in various Tariff Orders is given in the table below:

**Table 3.17au: R&M and A&G Expenses for FY 2004-05-Comparison of various Orders (Rs. Crore)**

<b>S. No</b>	<b>Particulars</b>	<b>TO dt. 23.02.2008</b>	<b>TO dt. 23.07.2014</b>	<b>TO dt. 31.08.2017</b>	<b>Actuals</b>
1	Repair & Maintenance	46.88	50.46	46.88	64.58
2	Administrative & General Expenses	16.62	21.77	16.62	26.56

3.8.110 The above comparison shows that the Hon'ble Commission has simply considered the numbers for R&M Expenses and A&G Expenses for FY 2004-05 as per Tariff Order dated February 23, 2008 which was subject matter of Appeal 36 of 2008. Coincidentally, the Hon'ble Commission in the Tariff Order dated August 31, 2017 has arrived at the same numbers (upto two decimal places) as trued-up in Tariff Order dated February 23, 2008 based on the Consultant report.

3.8.111 Accordingly, the Petitioner is claiming actual R&M Expenses and A&G Expenses of FY 2004-05 as under:

**Table 3.17av: Impact of R&M and A&G Expenses from FY 2004-05 to FY 2006-07 (Rs. Cr.)**



Particulars	FY 2004-05		
	Audited A/c	Tariff Order	Diff.
Repair & Maintenance	64.58	46.88	17.7
Administrative & General Expenses	26.56	16.62	9.94
<b>Total</b>	<b>91.14</b>	<b>63.5</b>	<b>27.64</b>

3.8.112 The total impact on account of R&M and A&G Expenses from FY 2004-05 along with carrying cost is as under:

**Table 3.17aw: Impact of R&M and A&G Expenses from FY 2004-05 along with carrying cost (Rs. Cr.)**

S. No	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	-	28.9	31.5	34.3	39.0	44.4	50.2	56.9	65.4	75.2	86.5	99.6
2	Additions	27.6											
3	Closing Balance	27.6	28.9	31.5	34.3	39.0	44.4	50.2	56.9	65.4	75.2	86.5	99.6
4	Average	13.8	28.9	31.5	34.3	39.0	44.4	50.2	56.9	65.4	75.2	86.5	99.6
5	Rate of Carrying Cost	9.00 %	9.00 %	9.00 %	13.6 %	13.75 %	13.11 %	13.38 %	14.8 %	15.0 %	15.0 %	15.1 %	14.80 %
6	Carrying Cost	1.2	2.6	2.8	4.7	5.4	5.8	6.7	8.5	9.8	11.3	13.1	14.7
7	Grand Closing Balance	28.9	31.5	34.3	39.0	44.4	50.2	56.9	65.4	75.2	86.5	99.6	114.3

3.8.113 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact to the Petitioner.

**Issue-A15: Lower rates of carrying cost:**

3.8.114 The Hon'ble ATE in Judgment dated July 30, 2010 (Appeal 153 of 2009) has ruled as under:

*"51. It cannot be disputed that the State Commission shall be guided by the principles that reward efficiency in performance as provided under section 61(e) of the Electricity Act, 2003. Similarly, the said section provide that State Commission shall be guided by the National Electricity Policy and Tariff Policy. Therefore, the State Commission should have allowed the carrying cost at the prevailing market lending rate for the carrying cost so that the efficiency of the distribution company is not affected. The State Commission is required to take the truing up exercise to fill up the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of theyear. This Tribunal in various judgments rendered by it held in Appeal No. 36*



of 2008 in the judgment dated 06.10.2009 reported in 2009 ELR (APTEL) 880 has held that “the true up exercise is to be done to mitigate the difference between the projection and actuals and true up mechanism should not be used as a shelter to deter the recovery of legitimate expenses/revenue gap by over-projecting revenue for the next tariff.” Therefore, the fixation of 9% carrying cost, in our view, is not appropriate. **Therefore, the State Commission is hereby directed to reconsider the rate of carrying cost at the prevailing market rate and the carrying cost also to be allowed in the debt/ equity of 70:30.**

...

58. ...

(iv) The next issue is relating to the inadequate lower rate of 9% for the allowance of the carrying cost. The carrying cost is allowed based on the financial principle that whenever the recovery of the cost is to be deferred, the financing of the gap in cash flow arranged by the distribution company from lenders and/or promoters and/or accrual and/or internal accrual has to be paid for by way of carrying cost. The carrying cost is a legitimate expense. Therefore the recovery of such carrying cost is a legitimate expectation of the distribution company. **The State Commission instead of applying the principle of PLR for the carrying cost has wrongly allowed the rate of 9% which is not the prevalent market lending rate.** Admittedly, the prevalent market lending rate was higher than the rate fixed by the State Commission in the tariff order. **Therefore, the State Commission is directed to reconsider the rate of carrying cost at the prevalent market rate keeping in view the prevailing Prime Lending Rate. ” (Emphasis added)**

3.8.115 The Hon’ble Commission in Tariff Order dated September 29, 2015 has reduced the rates of carrying cost based on net-worth as per Audited Accounts. Without pre-judice, the Petitioner requests the Hon’ble Commission to implement the aforesaid direction of Hon’ble ATE as the net-worth approach ought not to be followed and tantamount to incorrect results.

3.8.116 The Petitioner has applied the debt-equity ratio of 70:30 considering ROE as 16% and rate of interest as SBI PLR while computing the impact.

3.8.117 The carrying cost on already recognised Regulatory Assets upto FY 2015-16 is tabulated below:

**Table 3.17ax: Impact due to difference in rates of carrying cost (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
A	Opening Level of (Gap)	158.5								

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
B	Adjustment in Opening balance of RG on account of PDP adjustments	-118.3								
C	Opening Balance of Revenue Gap/(Surplus)	40.2	20.0	-159.8	39.3	887.6	2309.7	3061.6	3433.8	3652.8
D	Adjustments: Contingency Reserve				7.4					
E	Revenue gap/(Surplus) during the Year	-24.0	-170.8	206.6	797.6	1200.7	535.4	198.8	26.9	-804.2
F	Adjustment from surcharge						158.9	280.0	306.1	332.7
G	Closing	16.1	-150.8	46.7	829.5	2088.3	2686.2	2980.4	3154.6	2516.0
H	Average	28.1	-65.4	-56.5	434.4	1488.0	2498.0	3021.0	3294.2	3084.4
I	Carrying cost	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%
J	Carrying cost	3.9	-9.0	-7.4	58.1	221.4	375.5	453.4	498.2	456.4
K	Grand Closing balance	20.0	-159.8	39.3	887.6	2309.7	3061.6	3433.8	3652.8	2972.4
L	Additional true-up past impact									431.9
M	Total balance									3404.3
N	RA approved in TO dated 31.08.2017									2662.0
O	Difference in carrying Cost									<b>742.4</b>

3.8.118 In view of the above computation, there is difference of Rs. 742 Crore in closing balance of Regulatory Assets recognised up to FY 2015-16.

**Issue-A16: Efficiency factor for FY 2011-12:**

3.8.119 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 of 2012) has observed as under:

*"126...This issue was also considered by this Tribunal in Appeal No. 14 of 2012 and was decided in favour of the Appellant therein. The relevant extracts of the said judgment are as under:*

*"25. ...*

*However, the efficiency factor has to be determined by the Commission based on licensee's filing, benchmarking, approved cost by the Commission in the past and any other factor that Commission feels appropriate. In the impugned*

*order the Commission has determined the efficiency improvement factor as 2%, 3% and 4% for FY 2009, FY 2010 and FY-2011 respectively arbitrarily without any benchmarking or any analysis and identification of area of inefficiency where the improvement is desired to be carried out. Such efficiency factor has naturally to be determined only on the basis of material placed before the State Commission and analysis of various factors and not on ad-hoc basis as done by the State Commission. Therefore, this point is answered accordingly in favour of the Appellant”.*

*201 So, on the strength of the judgment of this Tribunal in Appeal No. 28 of 2008, we decide this point accordingly in favour of the Appellant.”*

*127. The above ratio of this Tribunal’s judgment in Appeal No. 14 of 2012 applies squarely into the facts of the present case. The issue is decided in favour of the Appellants. “*

3.8.120 The arbitrary determination of efficiency factor has resulted in reduction of Operation and Maintenance Expenses approved for FY 2011-12 by Rs. 11.4 Crore.

3.8.121 The impact due to the application of ad-hoc efficiency factor on Operation and Maintenance Expenses for FY 2011-12 along with carrying cost is tabulated below:

**Table 3.17ay: Impact due to application of ad-hoc efficiency factor (Rs. Crore)**

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	12.3	14.1	16.3	18.7
2	Additions	11.4				
3	Closing Balance	11.4	12.3	14.1	16.3	18.7
4	Average	5.7	12.3	14.1	16.3	18.7
5	Rate of Carrying Cost	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying Cost	0.9	1.8	2.1	2.5	2.8
7	Grand Closing Balance	12.3	14.1	16.3	18.7	21.5

3.8.122 The Petitioner requests the Hon’ble Commission to allow the impact of the aforesaid issue in the Tariff Order for FY 2018-19.

**Issue-A17: Efficiency factor from FY 2012-13 to FY 2015-16:**

3.8.123 The Hon’ble ATE in Judgment dated March 2, 2015 (Appeal 177 of 2012) has directed the Hon’ble Commission as under:

*“37.3 This issue has been considered by this Tribunal in Appeal no. 171 of 2012. The relevant paragraph of the judgment are reproduced below:*

*“12.5 We find that as per the Regulations, the efficiency factor can be determined by benchmarking and, therefore, there is no fault in the Commission’s basic approach for benchmarking the O&M cost of the Appellant with other distribution companies. However, the benchmarking of O&M has to be with respect to like distribution licensees and for a larger span with analysis. In the present case, the State Commission has given figures of O&M cost per unit of sales and per consumer for a single year i.e. FY 2010-11. **It is not clear whether the O&M expenses considered are the actual audited expenses or trued up expenses or the estimate of expenses approved in the tariff order.** The State owned distribution licensee considered in the benchmarking should be much who maintain reliable power supply and distribution loss level comparable to the Appellant. The Commission should have benchmarked the O&M costs of some more distribution licensees having metropolitan area of supply such as other licensees of **Delhi, Mumbai, Kolkata for at last three years** before coming to a conclusion. The approach adopted by the State Commission is over simplified and lacks analysis.*

*12.6 While we agree with the basic approach of benchmarking, the data and the analysis is required to be augmented as discussed above. Therefore, we remand the matter to the State Commission for redetermination of the Efficiency Factors.”*

3.8.124 As regards efficiency factor, the Hon’ble Commission in Tariff Order dated August 31, 2017 ruled as under:

*“3.500 From the above analysis, the Commission observes that O&M Expenses per unit of Sales for Rlnfra-D varies from Rs. 0.63/kWh to Rs. 0.99/kWh for same year (FY 2013- 14) in various Orders of Business Plan, Multi Year and True up. Therefore, the Commission decides not to consider O&M Expenses per unit of Sales of Rlnfra-D for comparison purpose for Delhi DISCOMs.*

*3.501 It is observed that BYPL is being allowed O&M Expenses per unit of Sales are Rs. 0.707/kWh and Rs. 0.708/kWh in FY 2014-15 and FY 2015-16 respectively as compared to the O&M Expenses per unit of Sales for Torrent Power Limited (Distribution) Surat (Rs. 0.30/kWh), Torrent Power Limited (Distribution) Ahmedabad (Rs. 0.40/kWh) and Tata Power Company Limited- Distribution Business (Rs. 0.28/kWh) and there is scope for improvement in O&M Expenses. Therefore, the Commission decides to retain the efficiency factor of 3%, 4% and 4% for FY 2013-14, FY 2014-15 and FY 2015-16 respectively. Such efficiency factor is not considered for SVRS Pension and Arrears on account of statutory pay revision to employees. ”*

The aforesaid finding is not justified on account of the following reasons:

- a) Non-consideration of R-Infra-D for comparison: The Business Plan and MYT Orders are based on estimation whereas True-up is based on actual. The O&M Expenses per unit of sales include two factors, i.e., O&M Expenses and Sales. Therefore the ratio can vary based on both O&M Expenses and Sales.

Further the ratio of O&M Expenses to per unit of sales in the Business Plan, MYT Petition and True-up of R Infra-D is higher than the Petitioner in all cases. Therefore, there is no reason as to why R Infra-D should be singled out for non-consideration for the purpose of comparison.

Also the Maharashtra Electricity Regulatory Commission (MERC) despite of being vast disparity between the ratio of O&M Expenses per unit of sales has allowed the O&M Expenses of R Infra-D and TPC-D. Therefore the ratios of R Infra-D also ought to be considered.

- b) Comparison not in line with APTEL Judgment in Appeal 178 of 2012: The Hon'ble ATE in Judgment dated March 2, 2015 has clearly directed the Hon'ble Commission to compare the O&M Expenses per unit of sales of Delhi, Mumbai and Kolkata for last 3 years. The Comparison is required to be conducted based on the data before the start of the control period, i.e., FY 2012-13. However the Hon'ble Commission has done the comparison based on FY 2014-15 and FY 2015-16 which was surely not available before FY 2012-13.

Further, the efficiency factor of FY 2013-14 cannot be determined based on comparison of FY 2014-15 and FY 2015-16.

- c) Comparison not conducted for similarly placed Utilities: The Hon'ble ATE in Judgment dated March 2, 2015 categorically stated that the comparison is to be done with the Utilities (including Government Utilities) having similar distribution loss levels. However the Hon'ble Commission has chosen to conduct the comparison only with TPC-D, TPL-S, TPL-A. The comparison of loss levels of these Utilities with Petitioner is tabulated below:

**Table 3.17az: Comparison of Distribution loss levels**

Particulars	UoM	Petitioner	TPC-D	TPL-S	TPL-A
Distribution Loss levels	%	12.46	0.92	3.89	7.15

As evident from the aforesaid table, the DISCOMs which have been considered for comparison with the Petitioner have far lower

distribution loss levels than the Petitioner. Such loss levels are generally possible when there are no theft zones in Licensed area, DISCOM is operating in relatively small licensed area and the ratio of high voltage consumers or bulk consumers to total consumers is higher. Further both Tata Power Company-Mumbai and Torrent Power Limited-Gujarat are full fledged Generation Licensee and thus, O&M Expenses of these companies gets divided among other Business as well. Thus these DISCOMs have completely different profile and are better placed than the Petitioner.

- d) No methodology for computation of 2%, 3% and 4%: The Hon'ble Commission in Tariff Order dated August 31, 2017 has compared the O&M Expenses per unit of sales of the Petitioner with that of TPC-D, TPL-S and TPL-A. However the Hon'ble Commission has still not provided the computation of 2%, 3% and 4% as to how these numbers have been derived from the benchmarking exercise.

3.8.125 Accordingly the Petitioner requests the Hon'ble Commission to allow the impact on account of the efficiency factor from FY 2012-13 to FY 2015-16 along with carrying cost as tabulated below:

**Table 3.17ba: Impact on account of efficiency factor along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	7.1	19.6	39.2
2	Additions	6.6	10.6	15.4	16.7
3	Closing Balance	6.6	17.8	35.0	55.9
4	Average	3.3	12.4	27.3	47.5
5	Rate of Carrying Cost	15.03%	15.01%	15.13%	14.80%
6	Carrying Cost	0.5	1.9	4.1	7.0
7	Grand Closing Balance	7.1	19.6	39.2	62.9

**Issue-A18: Efficiency factor for FY 2010-11:**

3.8.126 The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 178 of 2012) has directed the Hon'ble Commission as under:

*"44. The 36<sup>th</sup> issue is arbitrary imposition of efficiency factor for determination of O&M Expenses for true-up of FY 2010-11*

*44.1 This issue has been considered by this Tribunal in Appeal No. 61 of 2012 and decided in favour of the Appellant. The relevant extracts of the Judgment are referred below:*

...

*201 So, on strength of the Judgment in Appeal No. 14 of 2012 applies*

*squarely into the facts of the present case. The issue is decided in favour of the Appellants.”*

*44.2 Accordingly, this issue is decided in favour of the Appellant.”*

3.8.127 The impact on account of the said issue along with carrying cost is tabulated below:

**Table 3.17bb: Impact on account of efficiency factor during FY 2010-11 along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	11.5	13.2	15.2	17.4	20.1
2	Additions	10.8					
3	Closing Balance	10.8	11.5	13.2	15.2	17.4	20.1
4	Average	5.4	11.5	13.2	15.2	17.4	20.1
5	Rate of Carrying Cost	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying Cost	0.7	1.7	2.0	2.3	2.6	3.0
7	Grand Closing Balance	11.5	13.2	15.2	17.4	20.1	23.0

3.8.128 The Petitioner requests the Hon’ble Commission to allow the impact in the Tariff Order for FY 2018-19.

**Issue-A19: Computation of AT&C Loss for FY 2009-10:**

3.8.129 The Hon’ble ATE in Judgment dated March 2, 2015 (Appeal 178 of 2012) has directed the Hon’ble Commission as under:

*“79. The perusal of the findings of the Commission in the Impugned Order would suggest that the Delhi Commission has failed to understand the working of the tri-vector meters installed at the consumers’ premises by the Appellant. Basic electricity meters record only active power i.e. kWh consumed by the consumer. Tri-vector meters records all three vectors i.e. Active Power (kWh), Reactive Power (kVARh) and Apparent Power (kVAh). The principle parameter recorded by these meters is kWh. Other parameters are determined from this basic parameter based on instantaneous values of the current and voltage and their phaser angle. Therefore, the Commission has erred in computing kWh based on kVAh and power factor. It is interesting to note that the Commission has computed the average power factor for FY 2010-11 on the basis of kWh and kVAh recordings and computed kWh figures by reverse calculations using the kVAh figures for 2009-10 and average power factor for FY 2010-*



11.

80. In the light of above discussions we direct the Commission to recomputed the AT&C losses for FY 2009-10 using actual kWh figures as recorded in para 4.8 of the Impugned order. The issue is decided in favour of the Appellants.”

3.8.130 The Hon’ble Commission in Tariff Order dated September 29, 2015 ruled as under:

“3.104 The Commission has indicated the power factor to be applied in the respective Tariff orders for projection of revenue and accordingly the revenue has been estimated and considered in the respective tariff orders for the purpose of tariff fixation. The power factor derived from the data provided by the Petitioner for FY 2009-10 was not in line with either the power factor considered by the Commission for projection of revenue or actual power factor for the past period. It is observed that the Petitioner had submitted only one actual data i.e. kWh, whereas, for computation of billed amount in respect of the consumers where kVAh billing is approved in the Tariff Schedule, either actual kVAh or kWh together with power factor is required. In view of this, the Commission has filed Clarificatory Application before Hon’ble APTEL and the view on impact of AT&C Loss for FY 2009-10 will be taken, as deemed fit and appropriate, after receipt of the judgment of Hon’ble APTEL in the said Clarificatory Application.”

3.8.131 The Hon’ble Tribunal has clearly held that kWh is the basic parameter based on which the other factors are derived in the meters irrespective of the billing of the consumer. The Hon’ble Commission in Para-4.8 of the Tariff Order has stated that the energy sale in kWh was verified by the Hon’ble Commission during prudence check exercise. Therefore the Petitioner requests the Hon’ble Commission to implement the direction of Hon’ble ATE as per Judgment dated November 28, 2014. The computation of AT&C Loss for FY 2009-10 is tabulated below:

**Table 3.17bc: AT&C Loss for FY 2009-10**

S. No	Particulars	Units	FY 2009-10
A	Units consumed at BYPL Periphery	MU	5708
B	Units billed	MU	4310
C	Amount billed	Rs. Cr.	1944
D	Distribution Loss	%	24.50%
E	Amount collected	Rs. Cr.	1959
F	Collection efficiency	%	100.76%



S. No	Particulars	Units	FY 2009-10
G	Units realised	MU	4343
H	AT&C Loss level	%	23.92%

3.8.132 The Hon'ble Commission determined the AT&C Loss Target for FY 2009-10 as 26.26%. Since the actual AT&C Loss during FY 2009-10 is 23.92%, the Petitioner is entitled for an incentive as per MYT Regulations, 2007. The over-achievement on account of AT&C Loss for FY 2009-10 is tabulated below:

**Table 3.17bd: Over-achievement of AT&C Loss during FY 2009-10**

Particulars	UoM	MYT Order	Actuals	Reference
AT&C Loss	%	26.26%	23.92%	A
Over achievement/ (Under achievement)	%		2.34%	B
Energy Input	MU	5708	5708	C
Units realised	MU	4209	4343	D=C*(1-A)
Average Billing Rate	Rs./ kWh	4.51	4.51	E
Amount realised	Rs. Cr.	1899	1959	
Over-achievement	Rs. Cr.		60	
Proposed to be transferred to consumers	Rs. Cr.		30	
Proposed to be retained	Rs. Cr.		30	
Less: E. Tax	Rs. Cr.		82	
Less: LPSC	Rs. Cr.		21	
<b>Total revenue</b>	<b>Rs. Cr.</b>		<b>1796</b>	

3.8.133 The impact on account of re-computation of AT&C Loss of FY 2009-10 is tabulated below:

**Table 3.17be: Impact on account of Re-computation of AT&C Loss during FY 2009-10 (Rs. Crore)**

S. No	Particulars	FY 2009-10
1	Revenue submitted by Petitioner	1796
2	Revenue considered in Tariff Order	1817
<b>3</b>	<b>Net Impact</b>	<b>21</b>

3.8.134 The total impact including carrying cost is tabulated below:

**Table 3.17bf: Impact along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0	22.5	25.5	29.3	33.7	38.8	44.6
2	Additions	21						

S. No	Particulars	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
3	Closing Balance	21	22	26	29	34	39	45
4	Average	10.6	22.5	25.5	29.3	33.7	38.8	44.6
5	Rate of Carrying Cost	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying Cost	1.4	3.0	3.8	4.4	5.1	5.9	6.6
7	Grand Closing Balance	22.5	25.5	29.3	33.7	38.8	44.6	51.2

3.8.135 The Petitioner requests the Hon'ble Commission to consider the impact on account of the same in the Tariff Order for FY 2018-19.

**Issue-A20: Financing cost of LPSC based on SBI PLR:**

3.8.136 The Hon'ble Commission in Tariff Order dated September 29, 2015 relied on Judgment dated November 28, 2013 and has rejected any revision in the interest rate for funding of LPSC on the ground that (a) the funding of LPSC is akin to the funding of working capital and (b) since the interest rate for working capital is to be trued-up only when the variation in the SBI PLR is more than +/-1%, and as the actual variation has not been more than 1%, there is no need to revise the rate of interest for funding of LPSC. Same stand has been maintained by the Hon'ble Commission in Tariff Order dated August 31, 2017.

3.8.137 It is submitted that the Hon'ble Commission has relied upon the Hon'ble ATE's Judgment dated October 6, 2009 (Appeal 36 of 2008) which was with respect to Tariff Order dated February 23, 2008. The issue of financing cost of LPSC arose for the first time in Appeal 147 of 2009 which was filed with respect to Tariff Order dated May 28, 2009. The Hon'ble Commission has not referred to Hon'ble ATE's directions in Judgment dated July 12, 2011 (Appeal 147 of 2009) and instead relied upon Judgment dated October 6, 2009 (Appeal 36 of 2008). The relevant extracts from Judgment dated July 12, 2011 (Appeal 142 of 2009) are reproduced below:

*"10. The fifth issue is regarding the Late Payment Surcharge.*

*10.1. The above issue had been covered in this Tribunal's Judgment dated 30.7.2010 reported in 2010 ELR (APTEL) 0891 titled as NDPL vs. DERC. The relevant extracts of the Judgment are reproduced below:*

*"The normative working capital compensates the distribution company in delay for the 2 months credit period which is given to the consumers. The late payment surcharge is only if the delay is more than the normative credit period. For the period of delay beyond normative period, the distribution company has to be compensated with the cost of such additional financing. It is not the case of the*

*Appellant that the late payment surcharge should not be treated as a non-tariff income. The Appellant is only praying that the financing cost is involved due to late payment and as such the Appellant is entitled to the compensation to incur such additional financing cost. Therefore, the financing cost of outstanding dues, i.e. the entire principal amount, should be allowed and it should not be limited to late payment surcharge amount alone. **Further, the interest rate which is fixed as 9% is not the prevalent market Lending Rate due to increase in Prime Lending Rate since 2004-05. Therefore, the State Commission is directed to rectify its computation of the financing cost relating to the late payment surcharge for the FY 2007-08 at the prevalent market lending rate during that period keeping in view the prevailing Prime Lending Rate**".*

*This issue is decided accordingly in terms of the above Judgment."***(Emphasis added)**

3.8.138 Further the Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 178 of 2012) has directed the Hon'ble Commission as under:

*"4.8 We find that the State Commission has **mechanically allowed interest rate of 9.5% as allowed while passing the MYT order on funding of working capital without verifying the prevailing cost of debt contracted by the licensee and other relevant factors.** As directed in the judgment in appeal no. 153 of 2009, the financing cost for Late Payment amount has to be allowed at the prevalent market lending rates as per the Tariff Regulations. **According, the State Commission is directed to redetermine the interest rate and the amount of financing cost.**"***(Emphasis added)**

3.8.139 Accordingly the Petitioner has computed the financing cost of LPSC based on SBI PLR as under:

**Table 3.17bg: Difference in financing cost of LPSC due to rate of interest (Rs. Crore)**

S. No	Particulars	UoM	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
1	Delayed Payment Surcharge	Rs. Cr.	26.7	20.7	20.9	17.3	28.4	24.1
2	Rate of LPSC per month	%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
3	Rate of LPSC for 12 Months	%	18%	18%	18%	18%	18%	18%
4	Principal Amount	Rs. Cr.	148.1	114.9	115.9	96.3	157.5	134.1
5	SBI PLR	%	12.69%	12.79%	11.87%	12.26%	14.40%	14.61%
6	Financing Cost of	Rs. Cr.	18.8	14.7	13.8	11.8	22.7	19.6

S. No	Particulars	UoM	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
	LPSC							
7	Allowed by DERC	Rs. Cr.	13.8	11.0	11.5	10.0	20.0	12.8
8	<b>Difference</b>	<b>Rs. Cr.</b>	5.0	3.7	2.3	1.8	2.6	6.8

3.8.140 The aforesaid difference has been considered along with carrying cost as under:

**Table 3.17bh: Impact on account of difference in financing cost of LPSC along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	5.4	10.0	13.8	17.6	23.1	33.9	39.0	44.8
2	Additions	5.0	3.7	2.3	1.8	2.6	6.8			
3	Closing Balance	5.0	9.1	12.3	15.7	20.3	29.9	33.9	39.0	44.8
4	Average	2.5	7.2	11.2	14.7	18.9	26.5	33.9	39.0	44.8
5	Rate of Carrying Cost	13.68 %	13.75 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying Cost	0.3	1.0	1.5	2.0	2.8	4.0	5.1	5.9	6.6
7	Grand Closing Balance	5.4	10.0	13.8	17.6	23.1	33.9	39.0	44.8	51.5

3.8.141 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the Tariff Order for FY 2018-19.

**Issue-A21: DVB Arrears while computing AT&C Loss for FY 2008-09:**

3.8.142 The Hon'ble ATE in Judgment dated November 28, 2014 (Appeal 61 and 62 of 2012) has ruled as under:

*"58. In view of the above discussions the issue is decided as under:*

- 1) All the parameters such as LPSC, ED, DVB arrears have to be included both in the numerator as well in the denominator for computing the collection efficiency.*

*... "*

3.8.143 The Hon'ble Commission in Tariff Order dated August 26, 2011 did not consider the amount of DVB Arrears collected, i.e., Rs. 3.9 Crore during FY 2008-09 as the same was directly collected by DPCL. This issue is not at all related to prudence check of collection done by the Petitioner during FY 2008-09. Same is also evident from the Tariff Order dated August 26, 2011 as under:

*"3.293 Clause 4.7 of the MYT Regulations provides that*

*“The revenue realization from arrears relating to the DVB period, electricity dues and late payment surcharge shall be included for the computation of collection efficiency.”*

*3.294 The Commission indicated that the critical parameter for inclusion of any amount in computing collection efficiency is “realization”. Considering the fact that the amount of Government dues are not “realized” by the Petitioner and they are not routed through its books of accounts, the Commission holds that Government dues on account of DVB arrears, which are realized directly by DPCL, should not be considered for computing the collection efficiency.*

*3.295 Therefore, the Commission holds the view that the DVB arrears collected by the Petitioner and appearing in the audited books of the Petitioner should only be considered in revenue realized by the Petitioner and the DVB arrears which are directly collected by DPCL should not form a part of it.”*

3.8.144 As evident from the aforesaid, the DVB Arrears of Rs. 3.9 Crore was directly collected by DPCL and hence was not considered for the purpose of computation of AT&C Loss. However the Hon’ble Commission in Tariff Order dated February 23, 2008 set the AT&C Loss targets from FY 2007-08 to FY 2010-11 in terms of Regulation-3.302 wherein the DVB Arrears was considered as part of collection. The Hon’ble ATE in Judgment dated November 28, 2014 (Appeal 62 of 2012) has ruled that all parameters are to be included in both numerator and denominator for computation of collection efficiency.

3.8.145 Since, the Petitioner has not deducted the DVB Arrears while computation of impact on account of over-achievement of AT&C Loss during FY 2008-09. Therefore the amount pertaining to DVB Arrears during FY 2008-09 ought to be allowed as an expense along with carrying cost as under:

**Table 3.17bi: Impact on account of DVB Arrears (Rs. Crore)**

S. No	Particulars	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	4.2	4.7	5.3	6.1	7.0	8.1	9.3
2	Additions	3.9							
3	Closing Balance	3.9	4.2	4.7	5.3	6.1	7.0	8.1	9.3
4	Average	1.9	4.2	4.7	5.3	6.1	7.0	8.1	9.3
5	Rate of Carrying Cost	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying	0.3	0.5	0.6	0.8	0.9	1.1	1.2	1.4

S. No	Particulars	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
	Cost								
7	Grand Closing Balance	4.2	4.7	5.3	6.1	7.0	8.1	9.3	10.7

3.8.146 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact to the Petitioner.

**Issue-A22: Revision of R&M Expenses by revising "K" Factor:**

3.8.147 The Hon'ble ATE in Judgment dated March 2, 2012 (Appeal 178 of 2012) has ruled as under:

*"36.5 We find that the State Commission had decided to fix the 'K' factor as the average K factor based on the actual R&M expenses of the last five years. **We do not find any infirmity in the methodology except that the Commission has not followed the principle of computing the 'K' factor based on the actual for the last 5 years by ignoring the K factor for FY 2007-08. By this method the R&M expenses of FY 2012-13 have been determined more or less at the same level as 2011-12 which does not even cover the normal inflation factor. Therefore, the Commission should take into account the K factor for 2007-08 also and redetermine the K factor and the R&M expenses for the Control Period. Accordingly, directed.**"*  
**(Emphasis added)**

3.8.148 As evident from the aforesaid, the Hon'ble ATE upheld the methodology adopted by the Hon'ble Commission while determination of "K" factor. However, the Hon'ble ATE remanded the matter back to the Hon'ble Commission to re-determine the "K" factor by considering past 5 years data. Same was a matter of limited remand. However the Hon'ble Commission in Tariff Order dated September 29, 2015 revised the entire methodology and allowed "K" factor of 3.37% instead of 3.61% which was to be allowed as per Hon'ble ATE directions.

3.8.149 Aggreived from the above, the Petitioner challenged the same before Hon'ble ATE in Appeal No. 290 of 2015. Same is pending adjudication before Hon'ble ATE. In reply to the Appeal 290 of 2015, the Hon'ble Commission stated as under:

**"ISSUE NO. 25**

**Incorrect revision of R&M Expenses by revising "K" Factor**

25.1 That the Commission will reconsider this issue in view of the

*submission made by the Appellant in the appeal. The impact, if any, on account of revision of R&M Expenses by revising “K” factor will be considered in the subsequent tariff order.”*

3.8.150 However, the Hon’ble Commission in Tariff Order dated August 31, 2017 ruled as under:

*“3.183 The Commission has given the detailed reasoning and the factors which have been considered for determination of R&M expenses in Tariff Order dated 29/09/2015 and the same has been challenged by the Petitioner in Appeal No. 297/2015 before Hon’ble APTEL. As the matter is sub judice, therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon’ble APTEL in the said Appeal.”*

3.8.151 The Petitioner has computed the R&M Expenses based on “K” factor as per the direction of the Hon’ble ATE and GFA considered by the Hon’ble Commission in Tariff Order dated July 13, 2012 as under:

**Table 3.17bj: Difference in R&M Expenses due to revised “K” factor (Rs. Crore)**

S. No	Particulars	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
1	GFA allowed at the time of truing-up	1,960.9	1,984.2	2,124.5	2,354.5
2	K Factor	3.61%	3.61%	3.61%	3.61%
3	R&M Expenses	70.8	71.6	76.7	85.0
4	Allowed in MYT Order	66.1	66.9	71.7	79.4
5	<b>Difference</b>	<b>4.7</b>	<b>4.7</b>	<b>5.0</b>	<b>5.6</b>

3.8.152 The aforesaid impact along with carrying cost is tabulated below:

**Table 3.17bk: Impact on account of difference in R&M Expenses along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0	5.1	10.9	17.9
2	Additions	4.7	4.7	5.0	5.6
3	Closing Balance	4.7	9.7	15.9	23.5
4	Average	2.4	7.4	13.4	20.7
5	Rate of Carrying Cost	15.03%	15.01%	15.13%	14.80%
6	Carrying Cost	0.4	1.1	2.0	3.1



S. No	Particulars	FY 13	FY 14	FY 15	FY 16
7	Grand Closing Balance	5.1	10.9	17.9	26.5

3.8.153 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the Tariff Order for FY 2018-19.

**Issue-A23: Additional UI Charges above 49.5 Hz:**

3.8.154 The Hon'ble ATE in Judgment dated March 2, 2015 (Appeal 178 of 2012) has ruled as under:

*"28.4 In view of above submissions of the Appellant, we direct the State Commission to reconsider the amount disallowed on account of UI charges to restrict it to the amount for overdrawals below the frequency at which penal charges for UI are leviable. Accordingly, decided."*

3.8.155 As regards the issue of UI Charges, the Hon'ble Commission has given contradictory statement in Tariff Order dated September 29, 2015 which is as under:

*"3.114 The Commission, in compliance to the Hon'ble APTEL's judgment in Appeal No. 177 of 2012, has vide its letter dated 05.08.2015 sought the details of additional UI charges paid by the Petitioner in FY 2010-11 duly certified by SLDC. The Petitioner vide its letter dated 12.08.2015 has submitted additional UI charges paid in FY 2010-11 as Rs. 5.50 Crore certified by SLDC, which is the same amount disallowed by the Commission in the Tariff Order dated 13.07.2012. It is pertinent to state that **SLDC has not differentiated between penal and additional charges on account of UI. All the additional UI charges are imposed on the Distribution Licensee to maintain the Grid discipline.** The Forum of Regulators in its Press Release dated 23.07.2009 had stated that additional UI charges imposed on various distribution utilities across the country for excessive over drawl from the Grid will not be allowed to be recovered from the consumers w.e.f 01.08.2009 as follows:*

*"....*

*all the Chairpersons of State Electricity Regulatory Commissions as its members, has agreed that the additional Unscheduled Interchange (UI) charges imposed on distribution utilities for excessive over drawl from the grid would not be allowed to be recovered from consumers w.e.f. 1st August, 2009."*

*3.113 In view of the above, the Commission has not considered any*



**impact on the same. (Emphasis added)**

- 3.8.156 As evident from above, the Hon'ble Commission has disallowed entire UI Charges only because SLDC has not differentiated between penal and additional UI Charges.
- 3.8.157 The Hon'ble Commission in Tariff Order dated August 31, 2017 has maintained the same stand as in Tariff Order dated September 29, 2015 and has not allowed the entitled relief to the Petitioner.
- 3.8.158 It is submitted that the Central Electricity Regulatory Commission (UI and related matters) Regulations, 2009 (hereinafter referred to as the "UI Regulations") as amended from time to time does not prescribe any UI rates as penal. However, the said Regulations prescribed drawls and injection below 49.2 Hz as additional UI rate.
- 3.8.159 The Hon'ble Commission has also relied upon the deliberation of the FOR to justify the disallowance. It is submitted that the Press Release of the FOR dated July 23, 2009 provides as follows:-
- "3. After deliberation on the recommendation, the Forum of Regulators arrived at a consensus that the additional UI charges imposed on the utilities under the UI regulations of CERC for overdrawl during the period **when grid frequency is below 49.2 Hz.** should not be permitted in the annual revenue requirement of distribution utilities w.e.f. 1st August, 2009."* (Emphasis supplied)
- 3.8.160 It is clear from the above that the Hon'ble Commission has erred in relying upon the deliberations of the FOR as the FOR did not state that the additional UI charges for overdrawl during the period when grid frequency is between 49.5 and 49.2 Hz should not be permitted in the annual revenue requirement of distribution utilities.
- 3.8.161 Accordingly the Petitioner requests the Hon'ble Commission to allow UI Charges along with carrying cost as under:

**Table 3.17bl: Impact on account of UI Charges along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	-	0.4	1.8	2.2	3.3	3.8
2	Additions	0.4	1.2	0.2	0.7		
3	Closing Balance	0.4	1.6	2.0	2.9	3.3	3.8
4	Average	0.2	1.0	1.9	2.6	3.3	3.8
5	Rate of Carrying Cost	13.38%	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying Cost	0.0	0.2	0.3	0.4	0.5	0.6
7	Grand Closing Balance	0.4	1.8	2.2	3.3	3.8	4.3

3.8.162 The Petitioner requests the Hon'ble Commission to allow the above in the Tariff Order for FY 2018-19.

**Issue-A24: Penalty levied on account of non-fulfilment of RPO Targets:**

3.8.163 The Hon'ble ATE in Judgment dated April 2, 2015 (DFR No. 377 of 2015) ruled as under:

*"The Appellants are aggrieved by the letter dated 02.01.2015 sent on behalf of Delhi Electricity Regulatory Commission by the Executive Director (Tariff). The Appellants are more particularly aggrieved by the following paragraph:*

*"In this regard, the Commission has examined the representation of Distribution Licensees and has decided not to allow any carry forward or waive off of RPO targets for FY 2013-14 and FY 2014-15. The Distribution Licensees are directed to strictly comply with the Renewable Purchase Obligation under the Regulations and meet their RPO targets failing which action shall be taken as per the applicable provisions of the Act/ Regulations."*

*We notice that in the letter dated 02.01.2015 no reasons have been assigned by the State Commission as to why the representation of Distribution Licensees has been rejected. In the circumstances, we are of the opinion that the Appellants should file a Petition before the State Commission under Section 86 (1) (e) of the Electricity Act, 2003 seeking appropriate relief. If such petition is filed, the State Commission shall pass appropriate reasoned order thereon in accordance with law after hearing all parties concerned."*

3.8.164 Accordingly the Petitioner filed the Petition for relaxation of RPO Targets from FY 2012-13 to FY 2015-16 which was numbered as Petition No. 31 of 2015. The Hon'ble Commission in Tariff Order dated September 29, 2015 ruled as under:

*"3.302 The Petitioner and BRPL has requested reconsideration of compliance of RPO for FY 2012-13 and FY 2013-14 in Petition No. 30 & 31 of 2015. The Commission will decide regarding levy of penalty, if any, for non-compliance of RPO in the final Order of the Petition No. 30 & 31 of 2015. The impact as per the Order in the said Petition shall be considered in the subsequent Tariff Order and the same will be applicable for the Petitioner as well."*

However in the same Tariff Order, the Hon'ble Commission issued a directive which is reproduced below:

*"6.9 The Commission directs the Petitioner that RPO requirements for green power for the year 2015-16, must be met along with requirements carried over from the previous year, and if so required by way of purchase of REC's from the exchange. Non compliance of Renewable Purchase Obligation (RPO) shall attract penalty of 10% of the cost of REC for quantum of shortfall in RPO."*

3.8.165 Aggrieved from the aforesaid directive, the Petitioner challenged the same in Appeal No. 290 of 2015. In reply to Appeal 290 of 2015, the Hon'ble Commission stated as under:

*"...The Appellant has already submitted petition before the Commission vide Petition no. 30 of 2015 for renewable purchase obligation. The same petition is under examination before the Commission and the same has been dealt in the tariff order as follows:*

*"3.302 The Petitioner has requested reconsideration of compliance of RPO for FY 2012-13 and FY 2013-14 in the Petition No. 30 & 31 of 2015. The Commission will decide regarding levy of penalty, if any, for non-compliance of RPO in the final Order of the Petition No. 30 & 31 of 2015. The impact as per thw Order in the said Petition shall be considered in the subsequent Tariff Order."*

3.8.166 The Petition No. 31 of 2015 is still pending adjudication before the Hon'ble Commission. However contrary to the Hon'ble ATE's Judgment in DFR No. 377 of 2015, the statement given at Para-3.302 of Tariff Order dated September 29, 2015 and reply filed before Hon'ble ATE, the Hon'ble Commission levied penalty of Rs. 15.79 Crore on account of non-fulfilment of RPO from FY 2012-13 to FY 2015-16.

3.8.167 The Petitioner requests the Hon'ble Commission to re-instate the penalty levied on account of non-fulfilment of RPO targets till the Petition No. 31 of 2015 is disposed off. Further the penalty if any based upon the final Order in Petition No. 31 of 2015 may be levied in terms of RPO Regulations, 2012 and not @ 10% of shortfall in RPO Targets.

3.8.168 The impact on account of the same along with carrying cost is tabulated below:

**Table 3.17bm: Impact on account of reactive energy charges along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 16
1	Opening Balance	0
2	Additions	15.79
3	Closing Balance	15.79

S. No	Particulars	FY 16
4	Average	7.9
5	Rate of Carrying Cost	14.80%
6	Carrying Cost	1.2
7	Grand Closing Balance	17.0

3.8.169 The Petitioner requests the Hon'ble Commission to allow the same in the Tariff Order.

3.8.170 Based on the above submissions, the total impact claimed on account of implementation of Hon'ble ATE Judgments is tabulated below:

**Table 3.17bn: Total impact claimed on account of implementation of Hon'ble ATE Judgment (Rs. Crore)**

S. No	Particulars	Principal	Carrying cost upto FY 16	Total
1	Capex related issues	1,220.1	1,711.0	2,931.1
2	Impact of 11 months truing-up	159.9	232.6	392.5
3	Revision in distribution loss-FY 08 to FY 11	69.6	131.4	201.0
4	Effect of 6th pay commission for non-DVB Employees	63.4	103.7	167.2
5	AT&C Loss for FY 2011-12	95.2	83.6	178.8
6	Non-revision of AT&C Loss from FY 2012-13 to FY 2015-16	464.5	157.2	621.7
7	Increase in employee expenses corresponding to increase in consumer base	59.0	88.2	147.2
8	Payment to VRS Optees	45.3	100.8	146.1
9	R&M and A&G Expenses-FY 05 to FY 07	27.6	86.7	114.3
10	Lower rates of carrying cost		742.4	742.4
11	Efficiency factor for FY 2011-12	11.4	10.0	21.5
12	Efficiency factor from FY 13 to FY 16	49.4	13.5	62.9
13	Efficiency factor for FY 2010-11	10.8	12.3	23.0
14	Computation of AT&C Loss for FY 2009-10	21.1	30.1	51.2
15	Financing cost of LPSC based on SBI PLR	22.3	29.2	51.5
16	DVB Arrears while computing AT&C Loss for FY 09	3.9	6.8	10.7
17	Incorrect revision of R&M Expenses by revising "K" factor	20.0	12.5	32.5
18	Additional UI Charges above 49.5 Hz	2.4	0.8	3.3
19	RPO penalty	15.8	1.2	17.0
20	<b>TOTAL</b>	<b>2,361.8</b>	<b>3,554.1</b>	<b>5,915.8</b>

3.8.171 The Petitioner requests the Hon'ble Commission to allow the impact on account of the aforesaid issues in the Tariff Order for FY 2018-19.

**B. Previous claims where data has been sought or there are certain errors:**

- 3.8.172 The Petitioner has preferred various appeals before Hon'ble ATE against the past Tariff Orders issued by the Hon'ble Commission on various issues. Without pre-judice to appeals filed before the Hon'ble ATE, the Petitioner requests the Hon'ble Commission to reconsider certain issues where:
- The Hon'ble Commission disallowed the expenses and directed the Petitioner to submit additional details in the last Tariff Order. The Petitioner has subsequently submitted the details.
  - The additional submissions made by the Petitioner during the Tariff determination for FY 2015-16 have not been deliberated upon by the Hon'ble Commission in the Tariff Order.
  - There are certain errors which may be reviewed.

**Issue-B1: Disallowance of PP Cost due to MOD:**

- 3.8.173 The Hon'ble Commission in its Tariff Order dated September 29, 2015 directed the Petitioner as under:

*"Accordingly, the Commission has analysed the slot-wise data of power procurement for FY 2013-14 received from SLDC. It was observed from Petitioner's letter dtd. 19/05/2015 to SLDC wherein they have requested for back down of the stations for the months of April 2013-October 2013 that the Petitioner has requested back down of CTPS and MTPS only from June'13-Oct'13 whose variable rate were in the range of Rs. 1.58/kWh to Rs. 2.39/kWh. The plants proposed for backing down by the Petitioner to SLDC for the months of June'13-Oct'13 are as follows:*

<b>Name of the Plant</b>	<b>Range of Rate (Rs./ kWh)</b>
MTPS#6	2.02-2.39
CTPS#7&8	1.69-174

3.252 However, it is pertinent to state that in the said letter the Petitioner has not properly indicated Merit Order Dispatch considering all plants in its portfolio in accordance with the variable cost. Further, it is observed from Form F1 submitted with the Petition that the average cost of higher variable cost plants were not considered for backing down in the month of November i.e., the same month in which letter for back down was given to SLDC. The details of few costlier plants which has not been considered for backing down in the months of June'13-Oct'13 are as follows:

<b>Name of the Plant</b>	<b>Range of Variable Rate (Rs./ kWh)</b>
--------------------------	--

Dadri-I	2.97-3.21
Aravali	3.58-3.61
BTPS	3.08-4.54
Dadri-II	2.71-2.98
Pragati-I	2.86-3.46

3.253 Further, the Hon'ble APTEL in its judgment in Appeal No. 160 of 2012 dated 08.04.2015 (R-Infra-D v/s MERC) has ruled for avoided power purchase cost as follows:

“(vii) The Commission felt that it cannot carry out the micro analysis to quantify the exact impact of such imprudent power purchase and avoidable power purchase cost and therefore disallowed 2/3rd of the cost of Rs. 6.35 crores on account of such avoidable power purchase done from costlier firm/Day Ahead contracts which amounts to Rs. 4.23 crores.

(viii) In truing up for FY 2010-11 also the State Commission has given similar findings and disallowed 2/3rd of the cost of Rs. **22.94 crores on account of avoidable power purchase done from costlier firm/DA contracts amounting to Rs. 15.29 crores.**

70. We find that the State Commission has given detailed findings and computed avoidable power purchase after analysis of the data furnished by the Appellant.

... Accordingly we do not find any reason to interfere with the findings of the State Commission in this regard.”

3.254 Therefore, avoided Power Purchase Cost due to scheduling of Power without considering Merit Order Dispatch Principle by the Petitioner is Rs. 101.34 Crore which has been computed based on slot wise and plant wise energy details received from SLDC and considering the actual station wise average Variable rates for FY 2013-14. The said amount has not been considered in the Power Purchase Cost of FY 2013-14.”

3.8.174 Further the Hon'ble Commission in Tariff Order dated August 31, 2017 stated as under:

“3.211 It is observed that the Petitioner has submitted the disallowance due to violation of Merit Order Dispatch is only based on the letter from the Petitioner to SLDC to back down the power plant from eastern region. However, the Commission has provided a sample month of November, 2013 in its Tariff Order dated 29/09/2015, where backing down from Dadri-I and Dadri-II etc. stations had not been

*proposed in violation of Merit Order Dispatch principle and surplus power had been sold below the variable cost of these stations. Therefore, the Commission hereby directs the Petitioner to submit station-wise detailed analysis for reconsideration of disallowance of power purchase cost on account of Merit Order Dispatch Principle during FY 2013-14 with all the relevant documents to justify their claims, if any.”*

3.8.175 In view of the aforesaid direction from the Hon’ble Commission, the Petitioner vide letter dated October 12, 2017 had furnished the information to the Hon’ble Commission for consideration. Copy of letter is attached as **Annexure-2**.

3.8.176 In view of the above, the Petitioner requests the Hon’ble Commission to allow the Power Purchase cost on account scheduling of power without considering Merit Order Dispatch Principle. The impact along with carrying cost is tabulated below:

**Table 3.17bo: Impact on account power purchase cost disallowed due to MOD along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 14	FY 15	FY 16
1	Opening balance	0.0	108.9	125.4
2	Additions	101.3		
3	Closing Balance	101.3	108.9	125.4
4	Average	50.7	108.9	125.4
5	Rate of carrying cost	15.01%	15.13%	14.80%
6	Carrying cost	7.6	16.5	18.6
7	Grand Closing Balance	108.9	125.4	144.0

Without pre-judice to the contentions in the Appeal, the Petitioner requests the Hon’ble Commission to allow the aforesaid impact in the Tariff Order for FY 2018-19.

**Issue-B2: Overlapping banking transactions:**

3.8.177 The Hon’ble Commission in Tariff Order dated August 31, 2017 deducted the power purchase cost on account of overlapping of banking transactions.

3.8.178 It is submitted that the ‘Banking of Power’, also termed as ‘Swapping of Power’ is an arrangement between two parties, through which power is traded on barter system. Thus, a banking transaction is a non- monetary transaction where excess power available with a Licensee is traded for power at a subsequent date, without any net payment of money for the power to the other party with whom such an arrangement is entered into. However, it is not always possible to conclusively confirm the



complementary demand and surplus profiles to facilitate banking of power.

3.8.179 As regards FY 2014-15 and FY 2015-16, it is submitted that the Hon'ble Commission has disallowed the legitimate entitlements of the Petitioner by citing the instance of the Petitioner doing Banking purchase and sale during September'14 to Feb'16. In this regard, the Petitioner makes the following submissions:

- a. Forecasting, importing and exporting of power is on a best endeavor basis. The same assumes a trajectory of demand based on existing power sources being able to deliver as they have historically. However, at times, it is not possible to forecast with arithmetic precision or even provide in a forecast a deviation which is not in the ordinary course of business.
- b. It may be noted that on account of the re-allocation, which resulted in de-allocation of power to the Petitioner from these sources, the Petitioner who had forecasted its power requirement earlier from these sources, having a gap, which needed to be filled. However, through its professional, diligent and dedicated review of its power requirements and in anticipation of the shortage arising on account of the reallocation of the BTPS power, the Petitioner sought power from the market to make up the shortfall/ gap.
- c. The Petitioner vide e-mail dated 29.06.2017 submitted information regarding Banking and cost benefit analysis for FY 2014-15 & FY 2015-16 to the Hon'ble Commission.

3.8.180 Accordingly the impact on account of the disallowance of power purchase cost due to overlapping banking transactions along with carrying cost is tabulated below:

**Table 3.17bp: Impact on account of disallowance of power purchase cost due to over-lapping banking transactions (Rs. Crore)**

S. No	Particulars	FY 15	FY 16
1	Opening balance	0.0	2.5
2	Additions	2.3	1.5
3	Closing Balance	2.3	4.0
4	Average	1.2	3.2
5	Rate of carrying cost	15.13%	14.80%
6	Carrying cost	0.2	0.5
7	Grand Closing Balance	<b>2.5</b>	<b>4.4</b>

3.8.181 The Petitioner has preferred an Appeal before the Hon'ble ATE on the issue of deduction of the purchase cost on account of overlapping of banking transactions in the tariff order dated August 31, 2017. Without prejudice to



the contentions in the Appeal, the Petitioner hereby prays before the Hon'ble Commission to consider the submissions made above and thereafter allow the impact of Rs. 4.4 Crore in the ARR.

**Issue-B3: Non-Tariff Income-Write-back of miscellaneous provisions:**

3.8.182 The Hon'ble Commission in Tariff Order dated September 29, 2015 reversed miscellaneous provisions for doubtful debts for the period FY 2007-08 to FY 2011-12 and stated as under:

*"3.122 As per Regulation 5.23 of MYT Regulation 2007, the miscellaneous receipts from the consumers shall constitute non tariff income of the licensee. Write back of provision of doubtful debts related to recovery of debts forms part of miscellaneous receipts of the petitioner. The Commission is of the view that the target of AT&C loss has been fixed by considering the collection efficiency at 99.5% with a scope of 0.5% provisions for bad/doubtful debts. Therefore, any recovery on account of bad and doubtful debts shall constitute non tariff income of the licensee to the extent of 0.5% provision on debtors. Accordingly, the income on account of any such write back of provision for doubtful/bad debts is considered as Non tariff income."*

3.8.183 As regards above, it is submitted that "... collection efficiency of 99.5% with a scope of 0.5% provisions for bad/ doubtful debts...." is factually inaccurate. By virtue of the billing lag which is inherent in an annual tariff re-determination, even if the collection efficiency were assumed to be 100%, even then the actual collection would still be in the range of 99% to 99.25%. This is illustrated in the table below:

**Table 3.17bq: Collection efficiency after tariff hike at cent percent collection**

Months	Amount billed	Amount collected	Collection efficiency	Cumulative collection efficiency	Remarks
	Rs.	Rs.	F/E	Cum.	
April	1000	1000	100%	100%	
May	1000	1000	100%	100%	
June	1000	1000	100%	100%	
July	1000	1000	100%	100%	Tariff Hike of 8% assumed
August	1080	1000	92.59%	98.43%	Billing lag of 15-16 days after consumption
September	1080	1040	96.30%	98.05%	

Months	Amount billed	Amount collected	Collection efficiency	Cumulative collection efficiency	Remarks
	Rs.	Rs.	F/E	Cum.	
October	1080	1080	100%	98.34%	
November	1080	1080	100%	98.56%	
December	1080	1080	100%	98.72%	
January	1080	1080	100%	98.85%	
February	1080	1080	100%	98.96%	
March	1080	1080	100%	99.05%	
<b>Total</b>	<b>12640</b>	<b>12520</b>	<b>99.05%</b>	<b>99.05%</b>	

3.8.184 Further the Hon'ble Commission has excluded the provision for doubtful debts as appearing in the Audited Accounts of FY 2006-07 for the projection of A&G Expenses from FY 2007-08 to FY 2011-12 as per the table given below:

**Table 3.17br: Net A&G Expenses utilised for projection of A&G Expenses from FY 2007-08 to FY 2011-12 by the Hon'ble Commission**

S. No	Particulars	Amount (Rs. Cr.)
1	Total A&G Expenses	100.50
2	Less: Provision for Doubtful debts	61.89
3	Less: Loss on sale of assets	0.60
4	Add: Bank Charges	2.08
5	<b>Net A&amp;G Expenses considered for projection</b>	<b>40.10</b>

3.8.185 The Hon'ble Commission in Tariff Order dated February 23, 2008 has considered A&G Expenses as per the aforesaid table for projection of A&G Expenses from FY 2007-08 to FY 2010-11.

3.8.186 The impact on account of write-back of miscellaneous provisions along with carrying cost is tabulated below:

**Table 3.17bs: Impact on account of write-back of miscellaneous provisions along with carrying cost (Rs. Crore)**

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
Opening balance	0.0	1.4	23.2	125.3	217.7	252.9	293.0	343.2	401.7
Additions	1.3	20.2	93.0	70.8	2.7	1.9	5.7	6.1	12.7
Closing Balance	1.3	21.6	116.2	196.2	220.4	254.9	298.8	349.3	414.4
Average	0.7	11.5	69.7	160.7	219.0	253.9	295.9	346.2	408.0
Rate of carrying cost	13.68 %	13.75 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
Carrying cost	0.1	1.6	9.1	21.5	32.6	38.2	44.4	52.4	60.4
Grand Closing Balance	1.4	23.2	125.3	217.7	252.9	293.0	343.2	401.7	474.7

3.8.187 The Petitioner has preferred an Appeal bearing No. 290 of 2015 against the said tariff order dated September 29, 2015. Without pre-judice to the contentions in the Appeal, the Petitioner hereby prays before the Hon'ble Commission to consider the submissions made above and thereafter allow the impact in the Tariff Order for FY 2018-19.

**Issue-B4: Interest on funding of carrying cost:**

3.8.188 The Hon'ble Commission in its respective Tariff Orders has provided carrying cost on the outstanding balance of Regulatory Assets. However in actual scenario, the carrying cost was actually not being recovered during the year. The Hon'ble Commission vide its Tariff Order dated July 13, 2012 introduced 8% surcharge during FY 2012-13 towards recovery of Regulatory Assets. The surcharge was insufficient to recover even the entire carrying cost during FY 2012-13. As a result the Petitioner was not able to recover entire carrying cost till FY 2011-12 and only partial carrying cost during FY 2012-13.

3.8.189 In absence of any recovery, the Petitioner was required to fund even the carrying cost incurred from FY 2007-08 to FY 2013-14. Since the Petitioner was funding the carrying cost on its own, the same also attracts interest. Therefore carrying cost ought to have been allowed after grossing up.

3.8.190 From FY 2014-15, the Hon'ble Commission has allowed carrying cost separately as a part of tariff to be recovered from consumers.

3.8.191 Accordingly the Petitioner is seeking interest on funding of carrying cost during FY 2007-08 to FY 2013-14 as under:

**Table 3.17bt: Interest on carrying cost from FY 2007-08 to FY 2013-14 (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
1	Opening Balance	0.0	0.2	-0.3	-0.8	2.6	17.3	24.6
2	Additions	3.1	-8.1	-6.8	50.2	197.8	255.8	300.5
3	Recovery of CC						158.9	280.0
4	Rate of carrying cost	13.68%	13.75%	13.11%	13.38%	14.88%	15.03%	15.01%
5	Carrying cost	0.2	-0.6	-0.4	3.4	14.7	7.3	1.5
6	Grand Closing Balance	0.2	-0.3	-0.8	2.6	17.3	24.6	26.1

3.8.192 The Petitioner requests the Hon'ble Commission to allow the impact on

account of the aforesaid issue in the Tariff Order for FY 2018-19.

**Issue-B5: De-capitalisation of assets:**

3.8.193 As regards de-capitalisation of assets, it is submitted that the Petition for loss on retirement of assets was submitted on August 08, 2013. Pending adjudication of the petition, the Hon'ble Commission in Tariff Order dated September 29, 2015 instead of allowing the loss incurred on retirement of assets, decided to reduce all capex associated costs on account of retirement of assets (which was neither subject matter of the Petition nor the methodology for loss on retirement of assets as per TO dt. July 7, 2005) based on the methodology specified in letter dated November 26, 2014. Without pre-judice to the contentions raised in the Appeal, it is submitted that the amount on account of loss on retirement of assets ought to be allowed following the principle of natural justice.

3.8.194 The amount on loss on retirement of assets along with carrying cost is tabulated as under:

**Table 3.17bu: Amount due to retirement of assets (Rs. Crore)**

S.No.	Particulars	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	-0.8	1.8	2.7	5.4	7.4	9.2	11.0	15.4	35.6	40.9	47.1
2	Additions	-0.7	2.6	0.7	2.2	1.2	0.8	0.5	2.5	16.6			
3	Closing Balance	-0.7	1.8	2.5	4.9	6.6	8.2	9.7	13.6	32.0	35.6	40.9	47.1
4	Average	-0.4	0.5	2.2	3.8	6.0	7.8	9.5	12.3	23.7	35.6	40.9	47.1
5	Rate of carrying cost	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.1
6	Carrying cost	0.0	0.0	0.2	0.5	0.8	1.0	1.3	1.8	3.6	5.3	6.2	7.0
7	Grand Closing Balance	-0.8	1.8	2.7	5.4	7.4	9.2	11.0	15.4	35.6	40.9	47.1	54.1

3.8.195 The Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the Tariff Order for FY 2018-19.

**Issue-B6: Disallowance on account of Anta, Auraiya and Dadri Gas:**

3.8.196 The Hon'ble Commission in Tariff Order dated September 29, 2015 decided to disallow cost incurred on account of Anta, Auraiya and Dadri Gas stations stating that the Petitioner has not undertaken prior approval from the Hon'ble Commission.

3.8.197 As discussed in Para-3.5.3 of the Petition, the cost of energy from Anta, Auraiya and Dadri Gas incurred during FY 2012-13 and FY 2013-14 is legitimate as per the License conditions and ought to be allowed. The impact on account of the disallowance of cost from the energy purchased from Anta, Auraiya and Dadri Gas Stations during FY 2012-13 to FY 2015-16 along with carrying cost is tabulated below:

**Table 3.17bv: Impact on account of disallowance of power purchase cost from Anta, Auraiya and Dadri Gas along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	40.0	86.6	127.8
2	Additions	37.2	37.8	26.2	27.4
3	Closing Balance	37.2	77.7	112.8	155.3
4	Average	18.6	58.9	99.7	141.6
5	Rate of carrying cost	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	2.8	8.8	15.1	20.9
7	Grand Closing Balance	40.0	86.6	127.8	176.2

3.8.198 The Petitioner has preferred an Appeal bearing No. 290 of 2015 under Section-111 of the Act from the said tariff order dated September 29, 2015. Without pre-judice to the contentions in the Appeal, the Petitioner hereby prays before the Hon'ble Commission to consider the submissions made above and thereafter allow the impact of Rs. 176 Crore in the Tariff Order for FY 2018-19.

**Issue-B7: Cost disallowed on account of excessive trading at UI above contingency limit:**

3.8.199 There Hon'ble Commission in Tariff Order dated September 29, 2015 set a contingency limit on account of excessive trading at UI. The relevant excerpts are reproduced below:

*"4.98 In view of the above, the Commission has decided to impose a Contingency limit of 3% per month on Gross Power Purchase to dispose off Surplus power in UI. Percentage sale of surplus power over and above the Contingency limit will be set off with differential rate of exchange/ bilateral as decided by the Commission. The Commission may review the contingency limit in future Tariff Orders depending upon the Short Term Market dynamics and other parameters."*

3.8.200 The Hon'ble Commission in Tariff Order dated August 31, 2017 disallowed the cost on account of excessive trading at UI during the month of April to

June 2015 above contingency limit of 3%.

- 3.8.201 In this regard, it is submitted that the Hon'ble Commission specified the contingency limit of 3% in Tariff Order dated September 29, 2015 which was applicable from October 1, 2015 onwards. However the Hon'ble Commission while undertaking true-up of FY 2014-15 has retrospectively applied the contingency limit of 3% which is contrary to the Hon'ble ATE's Judgment dated August 4, 2011 in Appeal No. 199 of 2010 (Maharashtra State Power Generation Co Limited. vs Maharashtra Electricity Regulatory Commission and others) (Refer: Para 10.5, 16.3). In the said Judgment, this Hon'ble Tribunal has held that the order of the Maharashtra Electricity Regulatory Commission dated August 18, 2009 regarding disapproval of capital expenses cannot be applied retrospectively for the period FY 2008-09 and 2009-10. Similarly, in the Tariff Order dated August 31, 2017, the Hon'ble Commission has applied the benchmark of 3% to the months of August and September 2015.
- 3.8.202 In view of the above and without pre-judice to the contentions raised in the Appeal, the Petitioner requests the Hon'ble Commission to allow the disallowed amount along with carrying cost as under:

**Table 3.17bw: Impact along with carrying cost (Rs. Cr.)**

S. No	Particulars	FY 14	FY 15	FY 16
1	Opening balance	0.0	7.6	21.2
2	Additions	7.1	11.5	
3	Closing Balance	7.1	19.2	21.2
4	Average	0.0	7.6	21.2
5	Rate of carrying cost	15.01%	15.13%	14.80%
6	Carrying cost	0.5	2.0	3.1
7	Grand Closing Balance	7.6	21.2	24.4

**Issue-B8: Normative rebate:**

- 3.8.203 As regards the issue of normative rebate, the Hon'ble Commission in Tariff Order dated August 31, 2017 has viewed as under:

*"3.258 The issue of normative rebate is related to MYT Regulations, 2011 in which the power purchase cost has to be considered on the basis of maximum normative rebate on power purchase cost and transmission charges of the distribution licensee. One of the distribution licensee has challenged this issue before the Hon'ble High Court of Delhi in Writ Petition No. 2203 of 2012. The Hon'ble High Court of Delhi has upheld the provision of MYT Regulations, 2011 regarding consideration of maximum normative rebate on power*

*purchase cost and transmission charges for allowing power purchase cost to the distribution licensee. Therefore, the matter does not merit consideration at this point of time."*

3.8.204 As regards above it is submitted that it is factually correct that the Hon'ble Delhi High Court has upheld DERC Tariff Regulations, 2011. However Regulation-4.21 of DERC Tariff Regulations, 2011 is applicable for true-up which is reproduced below:

*"4.21 The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:*

*(a) Variation in revenue/ expenditure on account of uncontrollable sales/ power purchase respectively shall be true up every year;*

*..."*

As per the aforesaid Regulations, entire power purchase cost including normative rebate is uncontrollable. Regulation-4.21 does not carve out any exception for rebate. It includes all components of revenue, sales and power purchase costs.

The Hon'ble Commission has not dealt with the aforesaid contention which has repeatedly brought into the notice by the Petitioner in its Petitions, letters and during the time of Technical Validation Session.

3.8.205 It is further submitted that Regulation-5.24 which was the subject matter of dispute before Hon'ble Delhi High Court is applicable for the purpose of determination of ARR. Regulation-5.24 is reproduced below:

*"A5: PRINCIPLES FOR DETERMINATION OF ARR*

*ARR FOR RETAIL SUPPLY BUSINESS*

*5.2 The Aggregate Revenue Requirement for the Retail Supply Business of the Distribution Licensee, for each year of the Control Period, shall contain the following items;*

- (a) Cost of power procurement;*
- (b) Transmission & Load Dispatch Charges;*

*...*

*Cost of Power Procurement*

*5.23 Quantum of Power Purchase - The Commission approved category-wise sales forecast shall be applied along with Distribution loss trajectory **for estimating the Licensees' power procurement requirement** for each year of the Control Period.*

*5.24 Distribution Licensee shall be allowed to recover the net cost of power it procures from sources approved by the Commission, viz. Intra-state and Inter-state Trading Licensees, Bilateral Purchases, Bulk*



*Suppliers, State generators, Independent Power Producers, Central generating stations, non-conventional energy generators, generation business of the Distribution Licensee and others, **assuming maximum normative rebate** available from each source for payment of bills through letter of credit on presentation of bills for supply to consumers of Retail Supply Business;*

*Provided that the Distribution Licensee **shall propose** the cost of power procurement taking into account the fuel adjustment formula specified for the generating stations and net revenues through bilateral exchanges and Unscheduled Interchange (UI) transactions;*

*Provided further that where the Licensee utilises a part of the power purchase approved or bulk supply allocated or contracted for the Retail Supply Business for its Trading Business, the Distribution Licensee shall provide an Allocation Statement clearly specifying the cost of power purchase that is attributable to such trading activity."*

***(Emphasis bold and underlined)***

As evident from the above, normative rebate of 2% was required to be assumed for the purpose of ARR. It is further clear from Regulation-5.40 which states as under:

*"5.40 Truing-up shall be carried out in accordance with Regulation 4.21, for each year based on the actual/ audited information and prudence check by the Commission;  
..."*

As evident from the above, Regulation-5.40 clearly states that truing-up shall be carried out in accordance with Regulation-4.21. There is no mention of Regulation-5.24 for the purpose of truing-up. However the Hon'ble Commission is applying Regulation-5.24 at the time of truing-up which is contrary to the Regulations.

3.8.206 It is further submitted that the Hon'ble Delhi High Court in Judgment dated July 29, 2016 (W.P. (C) 2203/ 2012 & C.M. No. 4756/2012) on the issue of normative rebate held as under:

*"34. Next, the petitioner complained that in terms of Regulation 5.24, it is assumed that the petitioner would avail the 2% rebate on power purchase costs allowed to a distribution licensee on immediate payment of purchase bills. It was submitted on behalf of the petitioner that even though the working capital has been determined on the basis that bills for purchase of electricity would be paid within a period of one month, nonetheless, the impugned Regulations assumed*



*availing of rebate of 2% which is only possible if the bills are paid by a letter of credit. It is submitted that to the aforesaid extent, the impugned Regulations are contrary to Section 61(c) and 61(e) of the Act which required the Commission to be guided by the principle of rewarding efficiency in performance while determining the tariff. Mr Sanjay Jain countered the aforesaid submissions by pointing out that the bills for purchase of electricity are raised only at the end of the month and, therefore, the petitioner is expected to pay the same immediately thereafter and there is no inconsistency in the Regulations.*

***35. It is not necessary for us to examine the merits of this dispute because the principles as referred to in Section 61(c) and 61(e) of the Act are broad principles for guidance of the Commission. It is not necessary for the Commission to ensure that each and every component of ARR be so determined so as to incorporate an incentive for rewarding efficiency. As long as the Regulations as a whole promote efficiency in performance, no grievance in this regard can be made by any distribution licensee.” (Emphasis added)***

As evident from the aforesaid, the Hon’ble High Court has categorically stated that the Hon’ble High Court has not examined the merits of the dispute. Therefore the issue of normative rebate is not dismissed on merits. Instead the Hon’ble High Court has simply stated that the Hon’ble Commission is not required to determine each and every component of ARR in order to incorporate incentive for rewarding efficiency as per Section-61 (c) and Section-61 (e) of Electricity Act 2003.

3.8.207 It is further submitted that the Hon’ble ATE in Judgment dated July 30, 2010 (Appeal 153 of 2009) and March 2, 2015 (Appeal 178 of 2012) has decided the matter on merits and ruled as under:

*“6.3 The Tribunal in Appeal no. 14 of 2012 on 28.11.2013 reiterated the view taken by this Tribunal in Appeal no. 153 of 2009. This Tribunal in Appeal no. 153 of 2009. Decided as under:*

*“The second issue relates to the deduction of rebate due to the early payment of the power purchase cost from the ARR. The Appellant, through its efficient management, has paid all the bills immediately on raising of the bills by the generating company and, therefore, it has to be allowed a rebate of 2 per cent. Therefore, there is no justifiable reason for the State Commission to reduce the power purchase cost by rebate earned by the Appellant. The normative working capital provides for power purchase cost for one month. Therefore, rebate of*

*1 per cent available for payment of power purchase bill within one month should be considered as non-Tariff income and to that extent benefit of 1 per cent rebate goes to reducing the ARR of the Appellant. The rebate earned on early payment of power purchase cost cannot be deducted from the power purchase cost and rebate earned only up to 1 per cent alone can be treated as par of the non-Tariff income. Therefore treating the rebate income for deduction from the power purchase cost is contrary to the MYT Regulations. As such this issue is answered in favour of the Appellant.” The Tribunal in Appeal no.142 of 2009 reiterated the above decision of the Tribunal.*

*6.4 Accordingly, this issue is decided in term of the findings of this Tribunal in Appeal no. 153 of 2009 and Appeal no. 14 of 2012 in favour of the Appellant.”*

Therefore the decision of Hon’ble ATE in Judgment dated March 2, 2015 to consider the actual rebate upto 1% still holds valid and therefore is required to be implemented in true letter and spirit.

3.8.208 In accordance with the above submissions and without pre-judice to the contentions raised in Appeal before the Hon’ble ATE, the Petitioner requests the Hon’ble Commission to re-instate the power purchase cost disallowed by assuming normative rebate and consider the actual rebate earned from FY 2012-13 to FY 2015-16 in accordance with Regulation-4.21 read with Regulation-5.40 of DERC Tariff Regulations, 2011. Accordingly the Petitioner is claiming the difference between actual and normative rebate from FY 2012-13 to FY 2015-16 along with carrying cost as per the table given below:

**Table 3.17bx: Impact along with carrying cost (Rs. Cr.)**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	61.0	118.2	201.6
2	Additions	56.8	44.6	60.9	62.2
3	Closing Balance	56.8	105.7	179.1	263.8
4	Average	28.4	83.3	148.6	232.7
5	Rate of carrying cost	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	4.3	12.5	22.5	34.4
7	Grand Closing Balance	61.0	118.2	201.6	298.2

3.8.209 The Petitioner requests the Hon’ble Commission to allow the aforesaid amount in the Tariff Order for FY 2018-19.

**Issue-B9: Disallowance of R&M Expenses from FY 2007-08 to FY 2011-12:**

3.8.210 The Hon'ble Commission in its Tariff Order dated August 31, 2017 ruled as under:

*"3.266 The Hon'ble APTEL has already upheld the methodology adopted by the Commission in this matter in Appeal No. 271 of 2013 as follows:*

*"23.3*

*...*

*In this view of the matter, we find no merit in the contentions of the appellant and this issue relating to revised R&M based on revised GFA is decided against the appellant."*

3.8.211 The entire relevant excerpts from the Judgment pronounced by Hon'ble ATE in Appeal 271 of 2013 are reproduced below:

*"23.3) ...After analyzing the whole facts and figures, as provided by the appellant, at the time of previous tariff orders and the present Impugned Order, the learned Delhi Commission in paragraph 3.127 of the Impugned Order has clearly observed that employee expenses and A&G expenses had been trued up in the relevant FY up to 2010-11 based on the information furnished by the appellant/petitioner taking into consideration the provisions of MYT Regulations 2007. Since the efficiency factor has erroneously been applied during the true up of employee expenses on SVRS pension for 2008-09 and 2009-10, the same has now been rectified by the Delhi Commission in compliance of this Appellate Tribunal's directions in Appeal No.36 of 2008. This is the whole situation which has led the Delhi Commission to provisionally allow capitalization based on the appellant's submissions and the audited accounts of the appellant. All these factors have led to revision of GFA under MYT control period and the R&M expenses have also been revised provisionally, subject to final true up of capitalization. The learned Delhi Commission in paragraph 3.130 of the Impugned Order clarifies that employee expenses include expenses towards SVRS Pension. However, while calculating the net employee expenses, no efficiency factor has been applied on SVRS Pension. In this view of the matter, we find no merit in the contentions of the appellant and this issue relating to revised R&M based on revised GFA is decided against the appellant."*

As regards above, it is submitted that the facts of the above case does not hold true in case of the Petitioner. Unlike TPDDL, the other DISCOM which filed Appeal 271 of 2013, the GFA and provisionally approved capitalisation allowed by the Hon'ble Commission from FY 2007-08 to FY

2011-12 is not at all linked to the employee and A&G Expenses. The issue of truing-up of R&M Expenses has been challenged by the Petitioner in Appeal 265 of 2013 which is pending adjudication before Hon'ble ATE.

3.8.212 It is respectfully submitted that the treatment provided by the Hon'ble Commission is contrary to Clause-4.16 (b) of DERC Tariff Regulations, 2007 which states as under:

*"4.16 The true up across various controllable and uncontrollable parameters shall be conducted as per principle stated below:*

*...*

*(b) For controllable parameters,*

*(i) Any surplus or deficit on account of O&M expenses shall be to the account of the Licensee and shall not be trued up in ARR; and*

*..."*

It is further submitted that the Hon'ble Commission in Tariff Order dated February 23, 2008 has stated that the R&M Expenses shall not be trued-up despite of change in GFA. The relevant extracts are as under:

*"4.151 Any variations on account of R&M expenses shall not be trued up and any surplus or deficit on account of over or under achievement shall be to the account of the Petitioner. **The Commission clarifies that though the value of GFA is subjected to truing up at the end of the Control Period, the Commission, however, shall not true-up R&M expenses as a consequence of the same.(Emphasis added).***

As evident from above, the Hon'ble Commission clearly specified that in any case R&M Expenses will not be subject to truing-up. However the Hon'ble Commission has itself acted contrary to the principle set in Tariff Order dated February 23, 2008 and revised R&M Expenses based on GFA at the stage of truing-up.

3.8.213 It is further submitted that the Hon'ble Commission in Tariff Order dated September 29, 2015 revised the R&M Expenses for the second time based on revision in GFA. The Hon'ble Commission in Tariff Order dated July 31, 2013 has already revised the R&M Expenses from FY 2007-08 to FY 2011-12 based on the provisionally approved capitalisation pending physical verification of assets.

3.8.214 It is further submitted that the Petitioner in the Petition submitted on December 18, 2015 highlighted the contrary treatment given in Tariff Order dated July 31, 2013. However the Hon'ble Commission in Tariff Order dated September 29, 2015 without providing any reason for the deviation from Tariff Order dated February 23, 2008 again revised the R&M Expenses from

FY 2007-08 to FY 2011-12.

3.8.215 The difference between the R&M Expenses approved in respective ARR Orders and Tariff Order dated September 29, 2015 is tabulated below:

**Table 3.17by: R&M Expenses from FY 2007-08 to FY 2011-12**

(Rs. Cr.)

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12
1	R&M approved in Feb'08 Order, FY' 12 Order	32.25	43.12	55.24	63.55	71.54
2	R&M expenses Revised by DERC	32.02	41.11	51.96	58.45	65.87
3	Difference	0.23	2.01	3.28	5.10	5.67

3.8.216 The aforesaid impact along with carrying cost is tabulated below:

**Table 3.17bz: Impact of R&M Expenses along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening Balance	0.0	0.2	2.4	6.2	12.5	20.5	23.5	27.1	31.2
2	Additions	0.2	2.0	3.3	5.1	5.7				
3	Closing Balance	0.2	2.3	5.7	11.3	18.2	20.5	23.5	27.1	31.2
4	Average	0.1	1.3	4.1	8.8	15.3	20.5	23.5	27.1	31.2
5	Rate of Carrying Cost	13.68 %	13.75 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying Cost	0.0	0.2	0.5	1.2	2.3	3.1	3.5	4.1	4.6
7	Grand Closing Balance	0.2	2.4	6.2	12.5	20.5	23.5	27.1	31.2	35.8

3.8.217 The Petitioner requests the Hon'ble Commission to allow the impact on account of the same in the Tariff Order for FY 2018-19.

**Issue-B10: Double accounting of Employee Expenses for FY 2012-13 to FY 2015-16:**

3.8.218 The Hon'ble ATE in Judgment dated February 10, 2015 (Appeal 171 of 2012) set aside the methodology of benchmarking adopted for Employee and A&G Expenses by the Hon'ble Commission in Tariff Order dated July 13, 2012 and directed to re-determine the same by factoring in:

- Cost per unit of sales and Cost per employee instead of percentage increase;
- Comparison of overall O&M Expenses per consumer or per unit of sales instead of individual heads;
- Performance of distribution licensees in terms of system availability/

reliability of supply.

3.8.219 The Hon'ble Commission in Tariff Order dated September 29, 2015 has re-determined the Employee and A&G Expenses from FY 2012-13 to FY 2013-14 in accordance with the directions of Hon'ble ATE in Judgment dated February 10, 2015 (Appeal 171 of 2012).

3.8.220 As regards benchmarking, the Petitioner in Petition for Truing-up of FY 2015-16, Review of FY 2016-17, Multi-Year ARR from FY 2017-18 to FY 2020-21 and Tariff for FY 2016-17 requested the following:

- a) Double deduction of capitalisation from employee expenses;
- b) Consideration of lower of the two, i.e., norm or actual based on benchmarking.

3.8.221 The Hon'ble Commission in Tariff Order dated August 31, 2017 ruled as under:

*"3.271 The Commission has given the detailed reasoning and the factors which have been considered for determination of O&M Expenses in Tariff Order dated 29/09/2015 and the same has challenged by the Petitioner in Appeal No. 297/2015 before Hon'ble APTEL and is sub judice. Therefore a view in the matter will be taken, as deemed fit and appropriate, after receipt of the direction of the Hon'ble APTEL in the said Appeal.*

*3.272 Further, the Commission in its reply in Appeal No. 290/2015 before Hon'ble APTEL had indicated that the Commission will consider this issue to the extent of double deduction on account of capitalisation of employee expenses, if any. However, it is observed that there is no double deduction on account of capitalisation of employee expenses while approving employee cost for base year of FY 2011-12."*

3.8.222 In this regard, it is submitted that the Hon'ble Commission in Tariff Order dated September 29, 2015 has simply provided the parameters on which the normative employee and A&G Expenses are re-worked. However the methodology of computation of normative employee and A&G Expenses derived from the audited numbers of FY 2006-07 and weights assigned to various parameters for determination of employee and A&G Expenses from FY 2012-13 to FY 2015-16 remained undisclosed. The relevant extracts are reproduced below:

*"3.157 The Employee Expenses is majorly impacted by Sales Growth, Increase in CPI and WPI indices and performance on account of reduction in AT&C Loss levels. Therefore, the Commission has compared the Actual Employee Expenses of FY 2011-12 as per audited Financial statement of FY 2011-12 with the Actual Employee Expenses of FY 2007-08 escalated by proportionate increase in five years Sales*



Growth, Increase in CPI and WPI indices and performance on account of reduction in AT&C Loss levels. It has been observed that the Actual Employee Expenses of FY 2011-12 is less than the escalated Employee Expenses by considering Sales Growth, Increase in CPI and WPI indices and performance on account of reduction in AT&C Loss levels.

3.158 Therefore, the Commission has approved the base year Employee Expenses of the Petitioner at Rs. 206.51 Crore which is minimum of computed (Rs. 219.21 Crore) and Audited Employee Expenses (Rs. 206.51 Crore). Hon'ble APTEL has upheld the escalation factor of 8% to be applied for projection of Employee expenses during second MYT Control Period in Appeal No. 171, 177 and 178 of 2012.

3.169 Accordingly, the Commission has approved the Employee expenses for second MYT control period as follows:

**Table 3.40: Revised Employee Expenses for 2nd MYT Period (Rs. Crore)**

Particulars	Audited FY 12	Revised Employee Expenses (FY 12)	Base Year Expenses	FY 13	FY 14	FY 15
Gross Employee Expenses	206.51	219.21	206.51	223.03	240.87	260.14
Less:						
Capitalisation (@10%)				22.30	24.09	26.01
Net Employee Expenses				200.73	216.79	234.13

”

3.8.223 It may be noted that the Employee expense for FY 2011-12 considered to be “Gross Employee Expenses” is actually net of employee expense capitalised during the year. Hence, further deduction of 10% from the projected net expenses has led to double deduction of expenses for the 2nd MYT Period i.e. FY 2012-13 to FY 2015-16.

3.8.224 Further the Hon'ble Commission in Tariff Order dated August 31, 2017 has simply stated that “it is observed that there is no double deduction on account of capitalisation of employee expenses while approving employee cost for base year of FY 2011-12.” However the Hon'ble Commission has not demonstrated through computations as to how it reached on the conclusion that there is no double deduction on account of capitalisation of employee cost for base year of FY 2011-12. Same is against the spirit of Electricity Act 2003 wherein Section-86 (3) states that “The State Commission shall ensure transparency while exercising its powers and discharging its functions.”

3.8.225 Without pre-judice to the contentions in Appeal filed before Hon'ble ATE, the Petitioner requests the Hon'ble Commission to reconsider the claims on

account of double deduction of employee expenses as tabulated below:

**Table 3.17ca: Impact on account of double accounting of Employee Expenses along with carrying cost (Rs. Cr.)**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	24.0	53.5	89.5
2	Additions	22.3	24.1	26.0	28.1
3	Closing Balance	22.3	48.1	79.5	117.6
4	Average	11.2	36.0	66.5	103.6
5	Rate of carrying cost	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	1.7	5.4	10.1	15.3
7	Grand Closing Balance	24.0	53.5	89.5	133.0

3.8.226 Without pre-judice to the Appeal, the Petitioner requests the Hon'ble Commission to allow the aforesaid impact in the Tariff Order for FY 2018-19.

**Issue-B11: Cost disallowed on account of regulation of Power:**

3.8.227 As regards cost disallowed on account of regulation of power, the Hon'ble Commission Petitioner would like to submit that the Hon'ble Commission in Tariff Order dated July 23, 2014 stated as under:

*"3.88... Further, the Petitioner may submit within one month, claim if any along with relevant documents, related to loss on sale of surplus power during the off-peak hours from regulated stations that would have been otherwise imminent in case the power was not regulated.*

...

***3.9 Accordingly, the Commission obtained from SLDC the details of power drawn from other sources during regulation period and also the stations from which power regulation was done along with the quantum of power that would have been available if there was no regulation." (Emphasis added)***

3.8.228 As evident from above, the Hon'ble Commission in Tariff Order dated July 23, 2014 obtained the information pertaining to Regulation of power during FY 2012-13 from SLDC and directed the Petitioner to submit the cost-benefit analysis. Accordingly the Petitioner within one month vide letter dated August 25, 2014 submitted its claim along with relevant documents, related to loss on sale of surplus power during the off-peak hours from regulated stations that would have been otherwise imminent in case the power was not regulated. A meeting was also convened by the Commission staff on November 20, 2014, wherein the savings on account of regulation of energy from long term sources was demonstrated. However the Hon'ble



Commission has now stated that information from SLDC is awaited (which was actually the basis for disallowance of cost on account of regulation of power in Tariff Order dated July 23, 2014).

- 3.8.229 Further the Petitioner vide letter dated April 28, 2015 also submitted the cost-benefit analysis on account of regulation of power during FY 2013-14. However the Hon'ble Commission in its Tariff Order dated September 29, 2015 directed the Petitioner as under:

*"Impact on account of Regulated Power for FY 2012-13*

*...*

*3.115 The Commission has received the claims regarding disallowance on account of regulated power in true-up of FY 2012-13 in tariff order dated 23.07.2014. In order to finalise the claim of the Petitioner, the Commission has directed SLDC to submit the relevant information like quantum of Short Term Purchase during regulated period in case there has been no regulation of power. The said information is awaited from SLDC. The Commission will take the final view on the basis of information submitted by SLDC.*

*"*

- 3.8.230 It is submitted that the Hon'ble Commission in Tariff Order dated July 23, 2014 disallowed the cost borne on account of Regulated power based on data of SLDC. However in Tariff Order dated September 29, 2015, the Hon'ble Commission stated that the information pertaining to short term power purchased during FY 2012-13 is awaited from SLDC. Now the Hon'ble Commission in Tariff Order dated August 31, 2017 rejected the claim of the Petitioner opining as under:

***"3.280 The Commission has analyzed the submission of the Petitioner and it is observed that the Petitioner has not factored the merit order principle while computing the opportunity cost and benefit due to regulation of power vis-a-vis sale of surplus power. It is clarified that in case the power would not have been regulated from these cheaper station of NHPC then the Petitioner had the opportunity to back down its costly station and avail the cheaper power from NHPC, which could have reduced the loss on sale of surplus power as considered by the Petitioner." (Emphasis added)***

The aforesaid finding of the Hon'ble Commission is true only if the Petitioner would have been able to back-down entire costly generating stations. However the Hon'ble Commission ignored the fact that the generating stations are required to be run at least at the technical minimum so as to ensure grid stability. Same has also been intimated by SLDC vide letter dated December 13, 2013. The letter of SLDC has also been forwarded to the Hon'ble Commission vide letter dated June 16, 2017. Therefore even

if the power would not have been regulated from this cheaper station of NHPC then also the Petitioner would not have the opportunity to back down costly station as the technical minimum would have been despatched. The aforesaid finding is denial of the fact that the consumers have actually benefitted from regulation of power.

3.8.231 Further the Petitioner vide letter dated April 28, 2015 also submitted the cost-benefit analysis on account of regulation of power during FY 2013-14. However the Hon'ble Commission has not considered the submission of the Petitioner and disallowed the cost incurred during regulation of power during FY 2013-14 based on the submissions of SLDC for FY 2013-14 unilaterally.

3.8.232 The Petitioner vide letter dated June 16, 2017 also indicated the savings on account of regulation of power during FY 2014-15 and FY 2015-16. However the Hon'ble Commission while undertaking truing-up of power purchase cost during FY 2014-15 and FY 2015-16 ruled as under:

*"3.421 CERC vide its Regulations had introduced Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 on 28/09/2010 which are applicable to the Generating Station and the Transmission System where there is a specific provision in the Agreement between the Beneficiaries and Generating Company or the Transmission Licensee as the case may be, for Regulation of Power supply in case of non-payment of outstanding dues or non-maintenance of Letter of Credit or any other agreed Payment Security Mechanism. In its Statement of Reasons (SOR), CERC has specifically indicated that responsibility of bearing the capacity charges has to remain with the Regulated Entity. The relevant extract of the said SOR is as follows:*

*" 9.3 We have considered the comments and are of the view that a balance has to be maintained between the benefit and risk of the Regulating Entity as well as Regulated Entity. As a result of regulation of power supply, the generator is already ensured of getting all its expenses, including the capacity charge, energy charge and incidental charges like trading margin, if sold through a trader. So, there would not be loss to the generator due to regulation of power. As per the provisions of these regulations, the Regulated Entity has to pay capacity charge even if the power is not scheduled to him due to regulation.*

*....*

*13.7 We are of view that during the regulation of power, the allocation of generating capacity remains with the Regulated Entity*

*and only the power generated from it is being diverted for the specific reason of non-payment of outstanding dues by the Regulated Entity. Therefore, the responsibility of bearing the capacity charges has to remain with the Regulated Entity.”*

*3.422 The Commission vide its letter dated 28/12/2012 and dated 11/04/2013 communicated its decision to the distribution licensee as follows:*

*“..in such cases where cheaper power is regulated due to nonpayment of dues and eventually distribution licensee purchases expensive power to meet the demand, at the time of true-up cost of such expensive power will be restricted to the cost of cheaper power”*

*3.423 In view of the above, the Commission has decided to continue with its existing practice for treatment of Regulated Power and disallow the prorated Fixed Cost as also indicated in para 3.260 of the Tariff Order dtd. 29/09/2015.”*

3.8.233 As evident from above, the Hon’ble Commission despite acknowledging the fact that as per CERC Central Electricity Regulatory Commission (Regulation of Power Supply) Regulations, 2010 notified on 28/09/2010 the Petitioner is required to pay capacity charges also in case regulation of power, has disallowed the capacity charges. The same is contrary to CERC Tariff Regulations and CERC (Regulation of Power Supply) Regulations, 2010.

3.8.234 The Hon’ble Commission has completely ignored the fact that due to the regulation of power, the surplus power which otherwise would have been sold at lower rate during off-peak period never materialized. However, the Petitioner was also required to purchase additional short term power to cater the peak demand for a few hours in a day. It is submitted that during regulation of power the Petitioner was able to avoid purchase of 253 MU during off-peak hours whereas the Petitioner was required to purchase additional 2 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3.17cb: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2012-13**

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Actual Power Purchase cost during FY 13 (A)	6333	5.64	3574	Figures as per ARR Petition

Particulars	Quantum	Avg. per unit rate	Amount	Remarks
	MU	Rs./ kWh	Rs. Cr.	
Regulated Power during FY 2012-13	253	2.59	66	253 MU @ Rs. 2.59 per kWh as per DERC Tariff Order
Short term power purchase to make up for Regulated power when demand exceeds schedule (FY 2012-13)	2	3.21	1	2 MU as per short term schedule and Rs. 2.31 as per audited accounts (excl. banking)
Power Purchase Cost assuming no regulation of power in FY 2012-13 (B)	6584	5.53	3639	
<b>Net savings to consumers due to reduction in power purchase cost</b>			<b>65</b>	<b>B-A</b>

3.8.235 Similarly during regulation of power during FY 2013-14, the Petitioner was able to avoid purchase of 877 MU during off-peak hours whereas the Petitioner was required to purchase additional 18 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3.17cc: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2013-14**

Particulars	Quantum (MU)	Avg. per unit rate (Rs/kwh)	Amount (Rs.Cr.)	Remarks
Actual Power Purchase (FY13-14) (A)	6577	6.00	3949	Figures as per ARR petition
Regulated Power (FY13-14)	877	4.10	359	877 MU's as per SLDC @ Rs. 4.10/Unit (Avg. derived regulated power rate as per BRPL plants during regulated period) except meija-7
Short term power purchase to make up for Regulated power when demand exceeds schedule(FY13-14)	18	3.02	6	Purchase of 18 MU when Demand > Availability @ Rs 3.02/unit (Derived Short term wt Avg. exchange Rate based upon slot wise working)
Power purchase cost assuming no regulation of power in FY13-14 (B)	7436	5.79	4303	
<b>Avoided cost consumer due to reduction in power purchase cost.</b>			<b>354</b>	<b>B-A</b>

Similarly during regulation of power during FY 2014-15, the Petitioner was able to avoid purchase of 1596 MU during off-peak hours whereas the Petitioner was required to purchase additional 269 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3.17cd: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2014-15**

Particulars	FY 14-15			Remarks
	MU	Rs/Unit	Rs Cr.	
Cost of Regulated Quantum (DVC, SJVNL, NHPC) (A)	1596	4.06	647	MU as per SLDC report
Surplus Sale from Regulated Quantum (B)	1326	2.39	316	MU as per SLDC less
				Short term exchange purchase/ minor bilateral (1596-269)
				Rate as per Audit Certificate
Avoided cost (C)			331	A-B
Net Fixed Cost incurred on account of Regulated Quantum (D)			43	Fixed Cost including Regulated Credit (Rs 231 Cr- Rs 188 Cr.)
Cost of Short Term Power Purchased during Regulated period (E)	269	4.39	118	Short term purchase excludes Banking & UI, Rate as per Audit Certificate
Total Cost incurred on account of Regulated Quantum			161	F=D+E
<b>Avoided cost consumer due to reduction in power purchase cost.</b>			<b>170</b>	<b>G=C-F</b>

Similarly during regulation of power during FY 2015-16, the Petitioner was able to avoid purchase of 698 MU during off-peak hours whereas the Petitioner was required to purchase additional 116 MU though short term power during peak hours. As a result, the regulation of power actually contributed in net savings to the consumers due to the reduction in power purchase cost. The same is tabulated as under:

**Table 3.17ce: Reduction in Power Purchase Cost on account of Regulation of Power during FY 2015-16**

Particulars	FY 15-16			Remarks
	MU	Rs/Unit	Rs Cr.	

Particulars	FY 15-16			Remarks
	MU	Rs/Unit	Rs Cr.	
Cost of Regulated Quantum (DVC, SJVNL, NHPC) (A)	698	3.69	257	MU as per SLDC report (email attached as Annex-4)
Surplus Sale from Regulated Quantum (B)	580	2.23	130	MU as per SLDC less Short term exchange purchase/ minor bilateral (698-116) Rate as per Audit Certificate
Avoided cost			128	A-B
Nex Fixed Cost incurred on account of Regulated Quantum (D)			20	Fixed Cost including Regulated Credit (Rs 86 Cr- Rs 66 Cr.)
Cost of Short Term Power Purchased during Regulated period (E)	116	3.84	44	Short term purchase excludes Banking & UI, Rate as per Audit Certificate
Total Cost incurred on account of Regulated Quantum			65	F=D-E
<b>Avoided cost consumer due to reduction in power purchase cost.</b>			<b>63</b>	<b>G=C-F</b>

3.8.236 Without pre-judice to the Appeal, the Petitioner requests the Hon'ble Commission to consider the above submissions and allow the cost incurred on account of Regulated Power from FY 2011-12 to FY 2015-16 along with carrying cost as tabulated below:

**Table 3.17cf: Amount pertaining to Regulated Power from FY 2011-12 to FY 2015-16 (Rs. Crore)**

S. No	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	13.1	52.2	172.0	280.4
2	Additions	12.2	34.6	104.1	76.6	16.5
3	Closing Balance	12.2	47.7	156.4	248.6	296.9
4	Average	6.1	30.4	104.3	210.3	288.6
5	Rate of carrying cost	14.88%	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	0.9	4.6	15.7	31.8	42.7
7	Grand Closing Balance	13.1	52.2	172.0	280.4	339.6

**Issue-B12: Bank Charges/ Syndication fees:**

3.8.237 As regards the issue of allowance of bank charges/ syndication fees, the Hon'ble Commission in Tariff Order dated August 31, 2017 has stated as under:

*"3.287 The Commission had already clarified this issue in its tariff*

*order dated 29/09/2015 that the borrowing cost including syndication & documentation charges for availing the loan will be considered at the time of final true up of capitalisation. Further, the matter is sub-judice before Hon'ble APTEL in Appeal No. 290/ 2015 against the Commission's direction in Tariff Order dtd. 29/09/2015. Therefore, the matter does not merit consideration at this point of time."*

3.8.238 Further, the Hon'ble Commission in the Tariff Order dated 31.08.2017 has stated that

*"3.510 The Commission has already dealt this issue in tariff order dated 29.09.2015 as follows:*

*"As per Regulation 5.6 of the MYT Regulations, 2011, "Return on Capital Employed (RoCE) shall be used to provide a return to the Distribution Licensee, and shall cover all financing costs, without providing separate allowances for interest on loans and interest on working capital".*

*3.511 As per Accounting standard (AS 16 - Borrowing Costs) issued by Institute of Chartered Accountants of India and notified by Companies amendment Act 1999,*

*"6. Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalized as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation should be determined in accordance with this Statement. Other borrowing costs should be recognised as an expense in the period in which they are incurred."*

*3.512 Conjoint reading of all the three extracts above, the Commission is of the view that the borrowing costs directly related to the capital assets shall be added to the cost of such capital assets.*

*3.513 The Commission is of the view that only the borrowing cost will be considered at the time of final true up of capitalisation. Accordingly, the Commission has not considered the syndication and documentation charges claimed by the Petitioner. Accordingly, the Commission has not considered syndication fees etc. of Rs.31.19 Crore as part of miscellaneous expenses.*

*3.514 Accordingly, the Commission has not considered the Syndication fees/ Bank Charges and other borrowing costs claimed by the Petitioner and the same shall be considered at the time of final true up of capitalisation for the relevant year. "*

3.8.239 However the Hon'ble Commission has not dealt with the contentions raised by the Petitioner which are as under:



- a) Other SERCs are also allowing borrowing costs separately and not covering the same under carrying costs. Even the Hon'ble Commission also allowed borrowing costs/ financing charges separately till February 2008. Then how the financial institutions can have different borrowing conditions only for the Petitioner as compared to the Utilities in other states?
- b) How the borrowing costs/ financing charges borne on account of the loans taken for funding of Regulatory Assets be covered under normative rate of carrying cost which is already lower than the actual rate at which Petitioner is borrowing?
- c) When borrowing costs have not been included in A&G Expenses in the base year, i.e., FY 2010-11 then how the condition of cost allocation as per DERC MYT Regulations, 2011 is fulfilled?
- d) How the financial institutions can exclude Delhi DISCOMs from finance charges when DISCOMs in other states are paying the syndication charges/ borrowing fees and the same is being allowed in their ARR.

3.8.240 Borrowing costs pertaining to capex Loans is not capitalized with Assets: The borrowing costs which are capitalized during the year are not directly attributable to specific assets/ capital expenditure incurred during the year. In fact the funds are borrowed generally for capex purposes and related borrowing costs are capitalized as per the requirements of Clause-12 of AS-16 which states as under:

*"12. To the extent that funds are borrowed generally and used for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation should be determined by applying a capitalisation rate to the expenditure on that asset. The capitalisation rate should be the weighted average of the borrowing costs applicable to the borrowings of the enterprise that are outstanding during the period, other than borrowings made specifically for the purpose of obtaining a qualifying asset. The amount of borrowing costs capitalised during a period should not exceed the amount of borrowing costs incurred during that period."*

However the borrowing costs/ syndication fees are not being capitalized and are charged to Profit and Loss Account as finance costs. The practice adopted by the Petitioner regarding borrowing costs, i.e., syndication fees and finance charges etc. is in line with that followed by DISCOMs operating in other states. The Petitioner vide its letter dated May 30, 2014 submitted the relevant extracts of the Tariff Orders issued by other State Electricity Regulatory Commissions where the financing charges have not been capitalized and have been allowed separately as a part of ARR. The same is



reproduced again as under:

Chhattisgarh State Electricity Regulatory Commission (CSERC):

CSERC in its Tariff Order for FY 2013-14 dated July 12, 2013 considered the financing Charges of Rs. 2.35 Crore and Rs. 2.69 Crore apart from Interest on Loans while truing-up Interest and Finance Charges for FY 2010-11 and FY 2011-12 respectively. The relevant excerpts from the Order are given below:

*“The Interest and Finance Charges claimed by CSPDCL and approved by the Commission is as given in the following Table:*

**Table 204: Interest and Finance Charges as approved by the Commission (Rs. Crore)**

Particulars	FY 2010-11		FY 2011-12	
	Petition	Approved after Final Truing-up	Petition	Approved after Final Truing-up
Total Opening Net Loan	689.59	395.76		459.93
Repayment during the period	109	53.15		59.06
Additional Capitalisation of Borrowed loan during the year	108.47	97.18		92.37
Addition/ (Reduction) in normative loan during the year	0	20.14		18.58
Total Closing Net Loan	689.06	459.93		511.83
Average Loan during the year	689.33	427.85		485.88
Weighted Average Interest Rate	9.55%	9.62%		10.09%
Interest Expenses for the period	65.85	41.17		49.02
Add: Interest payment on Consumer Security Deposit	33.13	30.71		34.7
Add: Legal, Bank, Guarantee and Other Charges		2.35		2.69
Add: Adjustment on a/c of term loan from financial institution				(2.99)
Total interest and finance charges	98.98	74.22		83.4

Maharashtra Electricity Regulatory Commission (MERC):

MERC in its Tariff Order for FY 2013-14 dated August 16, 2012 allowed the actual financing Charges apart from interest on loans while truing-up the Interest and Finance Charges of MSEDCL for FY 2011-12. The relevant excerpts from the Order are given below:

*“3.10.5 The actual expenditure on other interest and finance charges has been accepted by the Commission as per the Audited Accounts. Thus, the interest on working capital, other interest and finance charges including interest on consumers’ security deposit, approved by the Commission for FY 2010-11 works out to Rs. 257 crore.*

**Table 30: Interest on Working Capital, Consumers’ Security Deposit and other interest and finance charges for FY 2010-11**

(Rs. crore)

Particulars	APR Order	Actual	Allowed after Truing-up
Interest on Working Capital		198.76	0
Interest on Security Deposit		211.3	211.3
Guarantee Charges		14.33	14.33
Finance Charges		25.34	25.34
Stamp Duty		5.93	5.93
Service Fee		0	0
Total other Interest and Finance Charges	295.8	455.66	256.9

Tamil Nadu Electricity Regulatory Commission (TNERC):

TNERC in its Tariff Order for FY 2013-14 dated June 20, 2013 allowed the Finance Charges apart from Interest on Loans. The relevant excerpts from the Order are given below:

*“3.148 Commission has observed that TANGEDCO has claimed interest on GPF in other finance charges. Commission is not allowing the interest expenses on GPF as it has not considered GPF reserve for funding of capital expenditure. The interest expenses on consumer security deposits and other finance charges approved by the Commission are tabulated below.*

**Table 67: Interest and other finance charges approved by the Commission (Rs. Cr)**

Parameter	2010-11		2011-12		2012-13	
	Petition	Commission	Petition	Commission	Petition	Commission
Interest on Consumer	145.34	100.44	380.05	247.6	399.05	380.81

Parameter	2010-11		2011-12		2012-13	
	Petition	Commission	Petition	Commission	Petition	Commission
Security Deposit						
Other Finance Charges	48.78	20.23	140.56	87.14	147.58	87.14
Total	194.12	120.67	520.61	334.74	546.63	467.95

Rajasthan Electricity Regulatory Commission (RERC):

RERC in its Tariff Order for FY 2013-14 dated June 06, 2013 allowed the Finance Charges as sought by the DISCOMs. The relevant excerpts from the Order are given below:

*“12.2 Commission’s Analysis*

*Finance charges have been allowed as sought by the three Discoms.....*

*Table-13: Interest and Finance Charges approved by the Commission for FY 2013-14 (Rs. Crore)*

Particulars	Approved JVNL	Approved AVNL	Approved JdVNL	Total
Opening balance of LTL	4108	2705	2496	9309
Capitalization	673	506	556	1734
Capital expenditure financed by Equity	120	111	108	339
Capital expenditure financed by Consumer Contribution and grants	272	137	195	604
Receipt of LTL for Capital expenditure	281	258	253	791
Principal Repayment	398	311	280	989
Closing balance of LTL	3990	2652	2469	9111
Average LTL	4049	2679	2482	9210
Average Interest rate of LTL (%)	12.61%	10.12%	11.51%	
Interest Charges on LTL	511	271	286	1067
Interest on Security Deposit	80	42	34	156
<b>Finance Charges &amp; Lease Rental</b>	<b>2</b>	<b>1</b>	<b>6</b>	<b>10</b>
Gross Interest Charges	593	314	326	1233
Interest Expenses Capitalized	0	0	0	0
Total Interest & Financing Charges	593	314	326	1233

Haryana Electricity Regulatory Commission (HERC):

HERC in its Tariff Order for FY 2013-14 dated March 30, 2013 allowed the Finance Charges apart from Interest. The relevant excerpts from the Order are given below:

***“3.9.4 Cost of raising finance and bank charges***

*UHBVNL has estimated that it will incur additional expenditure on account of raising finance and bank charges amounting to Rs. 110.60 million. The Commission feels that this estimate is extremely high considering the fact that the licensee expects to raise an additional amount of Rs. 1125 million and the proposed cost comes to nearly 10% of additional borrowings. **The Commission allows the licensee to recover Rs. 68.30 million on this account based on the audited accounts for FY 2011-12 subject to true up.” (Emphasis added)***

As evident from above, the Distribution companies in other states have also not capitalized the finance charges along with assets and the respective SERCs have allowed the same as a part of ARR. Therefore the borrowing cost, i.e., finance charges, syndication fees etc. ought to be allowed separately in the ARR.

**3.8.241 Borrowing costs pertaining to non-capex Loans are directly linked to Regulatory Assets:**

In absence of any amortization plan of Regulatory Assets, the Petitioner is required to fund the entire Regulatory Assets on its own. The Petitioner is funding a large portion of these Regulatory Assets through debt for which the Petitioner is required to bear syndication and documentation fees. It is noteworthy to mention that the finance charges have been borne mainly on account of IDBI Loan of Rs. 5000 Crore which was borrowed in absence of amortization of Regulatory Assets so as to clear the dues to the Gencos during FY 2011-12 and FY 2012-13. The Petitioner also informed the same to the Hon’ble Commission vide letter dated December 21, 2011 and April 30, 2012. The Petitioner also submitted the loan agreement before the Hon’ble Commission. Also the Hon’ble Commission vide its letter dated December 16, 2011 has assured the lender to amortize the Regulatory Assets completely by the end of Second Control Period.

It is further submitted that the energy distribution Sector is operating on cost plus regime. Any costs on account of Regulatory Assets ought to be allowed to the Petitioner otherwise the Petitioner will be penalized without any fault its own.

**3.8.242 Borrowing cost have not been included in A&G Expenses:**

The Hon'ble Commission itself has stated that Appendix 2 – Cost Allocation, Clause 3 (b) states as under:

*“A&G Cost: A&G expenses related to power purchase, metering, billing and collection, financing expenses on loan related to Retail Supply business shall be allocated to Retail Supply business. Office expenses like telephone, stationery, electricity, lease rent etc shall be apportioned between Wheeling and Retail Supply business on the basis of predominant usage concept.”*

The Hon'ble Commission has not included financing charges as a part of A&G Expenses while approving A&G Expenses from FY 2012-13 to FY 2014-15 in Tariff Order dated July 13, 2012. The financing charges appear in a separate schedule and are not merged with the A&G Expenses in the Audited Accounts of the Petitioner. The comparison of A&G Expenses from FY 2006-07 to FY 2010-11 as considered by the Hon'ble Commission and that appearing in the Audited Accounts is tabulated below:

**Table 3.17cg: A&G Expenses considered from FY 07 to FY 11 (Rs. Crore)**

S. No	Particulars	Reference	FY 07	FY 08	FY 09	FY 10	FY 11
1	Gross A&G cost submitted by the Petitioner	Table-92, of TO dt. July 13, 2012	100.5	121.55	74.44	125.05	123.54
a	Less: Bad Debts		-	-	-	86.64	61.77
b	Less: Provision for Doubtful Debts		61.89	76.52	28.58	2.44	10.88
c	Less: Loss On Sale / Discarding Of Assets		0.6	0.73	0.58	0.3	0.29
d	Less: SLA moved to A&G cost		-	-	-	-	6.93
e	Less: Loss on Foreign Exchange Fluctuation		-	-	1.09	0.04	0
f	Add: Lease Rental transferred from R&M		1.27	1.26	1.24	1.24	1.24
2	<b>Net A&amp;G Expenses considered by Commission for benchmarking</b>		<b>39.28</b>	<b>45.55</b>	<b>45.44</b>	<b>36.88</b>	<b>44.9</b>
3	A&G Expenses as per Audited Accounts	Respective Audited Accounts	100.50	121.55	75.50	125.05	123.54
4	<b>Financing charges as per Audited Accounts<sup>#</sup></b>	<b>Respective Audited Accounts</b>		<b>1.59</b>	<b>2.31</b>	<b>3.10</b>	<b>6.69</b>

<sup>#</sup> not included in Sr. No. 2 and appearing in separate schedule of Audited Accounts

As evident from above, the Hon'ble Commission has not considered the financing charges while benchmarking A&G Expenses. Therefore, the financing charges have not been included in A&G Expenses from FY 2012-13

to FY 2015-16 and are required to be allowed separately.

3.8.243 Accordingly the Petitioner is claiming syndication fees/ borrowing cost incurred during previous year as under:

**Table 3.17ch: Impact on account of syndication fees/ borrowing cost along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	1.7	4.4	8.3	16.5	54.5	81.1	126.8	171.6
2	Additions	1.6	2.3	3.1	6.7	33.1	17.1	31.2	23.8	13.9
3	Closing Balance	1.6	4.0	7.5	15.0	49.6	71.6	112.3	150.6	185.5
4	Average	0.8	2.9	5.9	11.6	33.1	63.1	96.7	138.7	178.5
5	Rate of carrying cost	13.68 %	13.75 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying cost	0.1	0.4	0.8	1.6	4.9	9.5	14.5	21.0	26.4
7	Grand Closing Balance	1.7	4.4	8.3	16.5	54.5	81.1	126.8	171.6	211.9

3.8.244 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the impact in the Tariff Order for FY 2018-19.

**Issue-B13: Income from other business-Street Light Maintenance Charges:**

3.8.245 As regards Street Light Maintenance Charges, the Hon'ble Commission in Tariff Order dated August 31, 2017 ruled as under:

*"3.399 The Commission has already clarified this issue in true up of FY 2014-15 and FY 2015-16 that there is no mention of incentive on street light maintenance in the notes of the audited financial statement. Therefore, the Commission has not considered the incentive on street light maintenance in the ARR of the relevant year.*

...

*3.577 The Commission in its Tariff Order dated 23/07/2014 has already clarified that income from street light maintenance is part of other income of regulated business. Further, the expenses incurred on account of this activity are part of O&M Expenses of the base year. Therefore, no separate expenses are permissible under this head."*

3.8.246 The Hon'ble Commission in Tariff Order dated July 23, 2014 ruled as under:

*"3.163 The Commission in its Order dated September 22, 2009 has notified the maintenance charges on street lights @ Rs.84/ light point/ month and material cost at the rate Rs. 19/ point/ month in addition to the specified tariff in the Tariff Orders of relevant year. The Commission has therefore recognised income from street light maintenance as other income of regulated business."*

- 3.8.247 However the Hon'ble Commission has not dealt with any of the contention of the Petitioner. Apart from distribution licensed business, the Petitioner is also generating revenue from other business. This other businesses are being operated parallely by the Petitioner.
- 3.8.248 Section 51 of the 2003 Act entitles the Distribution Licensee such as the Petitioner to engage in any other business for optimum utilization of its assets. Section 51 also requires that a certain proportion of "the revenues" derived from such business be utilized for reducing the wheeling charges. Section 51 is an enabling provision contained in the legislation with some purpose. Disallowance of the legitimate expenses relating to other business would lead to discouraging the distribution licensee such as the Petitioner from generating income from other business, which is otherwise undertaken considering the interest of consumers at large and optimum utilization of assets of distribution business. The Petitioner has engaged in the following businesses which are within the scope of Section 51 of the 2003 Act and has hereinafter provided reasons for this Hon'ble Commission to consider: (1) The Income by deducting the expenditure from the Revenue; and (2) Reworking of the proportion of the Revenues to be retained by the Petitioner in excess of the 20% which was stipulated in the 2005 Regulations as "a general principle" and entitling the Petitioner to "approach the Commission for change of the aforesaid sharing formula with proper justification, for approval of the Commission".
- 3.8.249 As regards above, it is submitted that the responsibility of maintaining street light is not contained in the License of the Petitioner. Electricity Act 2003 does not mandate the Distribution Licensee to maintain Street Lights. Further as per Section-42 of Delhi Municipal Corporation Act, 1957, it is the responsibility of MCD to maintain Street lighting system which is reproduced below:

*"42. Obligatory functions of the Corporation*

*....*

*(o) the lighting, watering and cleansing of public streets and other public places;*

*...*

*(w) the maintenance and development of the value of all properties vested in or entrusted to the management of the Corporation;"*

With the unbundling and restructuring of Delhi Vidyut Board (DVB) into corporate entities and privatisation of Distribution Business, the past legacy of maintenance of public lighting was passed on to the Petitioner as matter of course, though as distribution licensee the maintenance of public lighting was not their function. In fact the Petitioner vide letter dated March 24, 2004



intimated the Hon'ble Commission that maintenance of street lighting is the responsibility of MCD under DMC Act and not the Petitioner. Also the Hon'ble Commission in Order dated September 3, 2003 ruled as under:

*"10. Having heard the submission of the parties, the Commission observed that it was the prerogative of the MCD, either to get the work done themselves or through the DISCOMs, in the latter alternative, scope of works, as also the commercial terms and conditions, shall need to be proposed by MCD. Thereafter, the Commission shall determine the maintenance charges, etc. after having considered the responses of the DISCOMs."*

Therefore it is clear that maintenance of street lighting is an activity assigned to the Petitioner by MCD under DMC Act and does not fall under Regulated Business.

However there was a dispute between the Delhi DISCOMs and MCD on scope of work of the activities and charges at which is the maintenance is to be undertaken by Delhi DISCOMs. During FY 2003-04 The Hon'ble Commission received number of complaints on the poor conditions of street light prevailing in respect of Public Lighting in Delhi. Consequently in order to settle the matter, the Hon'ble Commission vide letter dated October 15, 2003, identified the scope of works as maintenance of existing streetlights, addition of new streetlights, installing of high mast lights, transformers, etc. Further the Hon'ble Commission vide Order dated March 5, 2004 determined the rates for maintenance of street lights. These rates were further amended by the Order issued by the Hon'ble Commission on September 24, 2009.

It is further submitted that the determination of rates and scope of work by the Hon'ble Commission does not mean that maintenance of streetlights fall under Licensed Activity and is a part of regulated business. The scope of work and determination of rates by the Hon'ble Commission has only helped MCD and the Petitioner to reach a consensus to avoid dispute.

Therefore, the Petitioner is maintaining Street Lights not as an obligation under Licensed Business but on behalf of road owning agencies, viz. MCD, NHAI, PWD in the areas comprising East and Central East Delhi.

For carrying out the maintenance services the Petitioner optimally engages its existing manpower, Technicians, Electricians, Electric Men, Line Engineers and also outsources further manpower.

3.8.250 The income from street light maintenance business along with carrying cost is tabulated below:

**Table 3.17ci: Impact on income from SLM Business along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	8.3	11.2	25.4	42.0	62.3	84.8	111.0	143.4
2	Additions	7.7	1.7	11.9	12.4	13.1	12.1	12.6	14.5	5.3
3	Closing Balance	7.7	10.0	23.1	37.8	55.1	74.5	97.3	125.5	148.8
4	Average	3.9	9.1	17.2	31.6	48.6	68.4	91.0	118.3	146.1
5	Rate of carrying cost	13.68 %	13.75 %	13.11 %	13.38 %	14.88 %	15.03 %	15.01 %	15.13 %	14.80 %
6	Carrying cost	0.5	1.3	2.3	4.2	7.2	10.3	13.7	17.9	21.6
7	Grand Closing Balance	8.3	11.2	25.4	42.0	62.3	84.8	111.0	143.4	170.4

3.8.251 Without pre-judice the Petitioner requests the Hon'ble Commission to allow the aforesaid along with carrying cost.

**Issue-B14: Financing cost of LPSC from FY 2013-14 to FY 2015-16:**

3.8.252 As regards financing cost of LPSC from FY 2013-14 onwards, the Hon'ble Commission in Tariff Order dated August 31, 2017 ruled as under:

*"3.307 The Petitioner has submitted that total LPSC collected from the consumer should be allowed to be retained by the Petitioner. However, as per the practice followed by the Commission and Hon'ble APTEL's direction in Appeal no. 61 & 62 of 2012 dated 28/11/2014, the cost of funding of working capital due to delayed payment by the consumers has been allowed to the Petitioner. Therefore, the Commission has not considered the additional cost over and above the cost of funding of working capital for financing of LPSC during FY 2013-14."*

As evident from the above, the Hon'ble Commission has referred to Hon'ble ATE's direction in Appeal no. 61 and 62 of 2012 which was in respect of truing-up of FY 2008-09 and FY 2009-10 when the LPSC was being levied for entire month of flat rate of 1.5% per month. However the Hon'ble Commission has not dealt with the submission of the Petitioner that the Hon'ble Commission vide letter dated December 13, 2012 itself changed the methodology of charging LPSC from the consumers and has directed the Petitioner to charge LPSC only corresponding to number of days of delay in the payment by the Consumers.

3.8.253 It is further submitted that the Petitioner levied LPSC @ 1.5% per month on flat basis till FY 2012-13. The Hon'ble Commission was therefore allowing only financing cost of LPSC to the Petitioner by computing the principal

amount (LPSC divided by 18% ( $12 \times 1.5\%$ ) and allowing carrying cost on the principal amount. The difference between the amount of LPSC and the principal amount was passed on the consumers by way of NTI.

- 3.8.254 Based on the representation of Foundation of Rubber & Polymer Manufacturers, the Hon'ble Commission vide letter dated December 13, 2012 communicated that LPSC should be charged proportional to the number of days of delay in receiving payment from the consumers by the Petitioner. The Hon'ble Commission in Tariff Order dated July 31, 2013 again directed the Petitioner to charge LPSC proportionate to the number of days of delay in receiving the payment from the consumers of the DISCOMs.
- 3.8.255 The Petitioner in its Petition for Truing-up of FY 2013-14, Review of FY 2014-15 and ARR and Tariff for FY 2015-16 requested the Hon'ble Commission to allow the entire LPSC instead of financing cost of LPSC as during FY 2013-14, the Petitioner charged LPSC proportionate to the number of days of delay and not on flat basis. The methodology of charging LPSC proportionate to the number of days of delay leads to recovery of only financing cost of LPSC for the delay in payment and not on flat basis. However the Hon'ble Commission without referring to its' direction for change in charging of LPSC continued with the earlier methodology which was utilised for computation of financing of LPSC till FY 2012-13. Such treatment has actually resulted in allowance of financing cost of LPSC at much lower rate.
- 3.8.256 It is further submitted that the concept of financing cost of LPSC was introduced by the Hon'ble Commission in Tariff Order dated August 26, 2011 as LPSC was considered as a part of revenue realisation for the purpose of computation of AT&C Loss as per Clause-4.7 (c) of DERC Tariff Regulations, 2007. As per DERC Tariff Regulations, 2011, the methodology of computation of revenue realisation for the purpose of computation of AT&C Loss has been changed and LPSC is no longer being included as a part of revenue realisation for computation of AT&C Loss from FY 2012-13 onwards. Since the methodology for computation of AT&C Loss has been changed, the Petitioner ought to be allowed entire LPSC instead of financing cost of LPSC.
- 3.8.257 It is further submitted that concept of financing cost of LPSC is based on the principle that the Petitioner will fund the amount delayed through loans whereas, it is practically not possible to arrange for the funding of such delayed payment as the Petitioner does not know in advance as to which consumer will pay the bill on deadline and which consumers will not pay the bill on deadline. The process of raising loans for funding any expenditure is time taking process and therefore, in case of any default on part of consumers to pay electricity bills in time, the Petitioner has to face the

following penalties as per the MYT Regulations 2011:

- a. Penalty on account of under-achievement of AT&C Loss: As per DERC MYT Regulations, 2011, the AT&C Loss Target has been categorized as controllable parameter. In case of any under-achievement of AT&C Loss, the Hon'ble Commission levies penalty on the Petitioner irrespective of the fact that the default in collection efficiency is on account of consumers.
- b. Penalty in repayment of Loans: In present scenario, the Petitioner is not operating in business as usual situation. Apart from normal capex loan and working capital loan, the Petitioner is required to fund huge amount of regulatory assets and the revenue gap during the year on account of variation between the estimated ARR and actual ARR. In such a situation any default in payment of billed amount put financial constraints on the ability of the Petitioner to efficiently discharge its debt obligations. As a result the Petitioner has to face penalty on account of delay in repayment of loans which is not being passed in the ARR.
- c. Penalty by Generators: Generators levy penalty of 1.5% per month in case of non-payment of dues within time.

3.8.258 The Hon'ble Commission neither allows the amount nor financing cost on account of these penalties. These penalties are entirely borne by the Petitioner. However the penalty paid by the consumers on account of the delayed payment is not being allowed to the Petitioner and only financing cost on such delayed payment is being allowed. Therefore the Petitioner requests the Hon'ble Commission to allow entire LPSC during FY 2013-14 to be retained by the Petitioner as the same merely meets the financing cost of delay in payment.

3.8.259 The difference in LPSC and the amount allowed by the Hon'ble Commission from FY 2013-14 to FY 2015-16 along with carrying cost is tabulated below:

**Table 3.17cj: Impact on account of difference in LPSC during FY 2013-14 to FY 2015-16 along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 14	FY 15	FY 16
1	Opening balance	0.0	9.7	21.1
2	Additions	9.0	9.2	8.0
3	Closing Balance	9.0	18.9	29.1
4	Average	4.5	14.3	25.1
5	Rate of carrying cost	15.01%	15.13%	14.80%
6	Carrying cost	0.7	2.2	3.7
7	Grand Closing Balance	9.7	21.1	32.8

3.8.260 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the aforesaid along with carrying cost.

**Issue-B15: Wrong adjustment of 8% surcharge against revenue gap/ surplus during FY 2012-13 and FY 2013-14:**

3.8.261 As regards the issue of wrong computation of carrying cost, the Petitioner in its Petition for Truing-up of FY 2014-15, Review of FY 2015-16 and Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff for FY 2016-17 stated as under:

*"3.8.258 Regulation 5.40 of MYT Regulations, 2011 states as under:*

*"5.40 Truing-up shall be carried out in accordance with Regulation 4.21, for each year based on the actual/audited information and prudence check by the Commission;*

*Provided that if such variations are large, and it is not feasible to recover in one year alone, the Commission may take a view to create a regulatory asset, as per the guidelines provided in clause 8.2.2 of the National Tariff Policy."(emphasis supplied)*

*3.8.259 Clause-8.2.2 of National Tariff Policy, 2015 dated January 28, 2016 states as under:*

*"8.2.2 The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as a very rare exception in case of natural calamity or force majeure conditions and subject to the following:*

*a. Under business as usual conditions, no creation of Regulatory Assets shall be allowed;*

*b. Recovery of outstanding Regulatory Assets **along with carrying cost** of Regulatory Asset should be time-bound and with a period not exceeding seven years. The State Commission may specify the trajectory for the same."(emphasis supplied)*

*3.8.260 The Hon'ble Commission in Tariff Order dated September 29, 2015 directly deducted the 8% surcharge from the revenue gap during the year instead of adjusting the same firstly against the carrying cost. In such a manner, the Hon'ble Commission has not provided any carrying cost on Regulatory Assets during truing-up of FY 2013-14.*

*3.8.261 It is further submitted that the adjustment of revenue from 8% surcharge directly from revenue gap recognised during the year is contrary to the following:*

- a) Hon'ble Commission statement in Tariff Order dated July 31, 2013:

*"5.29 For meeting carrying cost of the revenue gap till FY 2013-14, the Commission **has decided to continue the existing surcharge at 8% over the revised tariff**. The Commission in consultation with GoNCTD shall evolve a reasonable schedule for liquidation of revenue gap which will be fair to all stakeholders.**(Emphasis added)***

- b) Submission made by the Hon'ble Commission on November 25, 2013 in IA 358 & 365 of 2013 on affidavit before Hon'ble ATE:

*"3...Furthermore, in compliance of APTEL's Order of November 11, the Commission in a time span of less than one year approved another tariff hike of 23% with quarterly power purchase adjustment surcharge and **additional surcharge @ 8% for recovery of carrying cost and partial recovery of Regulatory Assets**. It was expected that the recovery of accumulated short-fall will commence w.e.f. 1st July 2012...*

...

*6. The surcharge of 8% was introduced in FY 12-13 so as to meet a partial gap in carrying costs and start the process of gradual recovery of the Regulatory Assets..."[Emphasis Added]*

- c) Submission made before the Hon'ble Supreme Court in Writ Petition 104 of 2014:

*The Hon'ble Commission submitted a road-map for liquidation of Regulatory Assets before Hon'ble Supreme Court wherein Delhi DISCOMs would be allowed to recover carrying cost separately apart from recovery of principal amount whereas the Hon'ble Commission is adjusting 8% surcharge directly from revenue gap during the year without providing the carrying cost.*

*3.8.262 It is further submitted that the Hon'ble Commission has done similar treatment in Tariff Order dated July 23, 2014 for FY 2012-13. The Petitioner in the Petition submitted on December 18, 2014 also highlighted the erroneous treatment given for 8% surcharge in Tariff Order dated July 23, 2014 and requested to rectify the same. However the Hon'ble Commission without assigning any reason continued with the same methodology. The Hon'ble Commission did not even indicate as to where the carrying cost on Regulatory Assets created upto FY 2013-14 has been allowed in the true-up of FY 2013-14."*



3.8.262 As regards the aforesaid submission, the Hon'ble Commission in Tariff Order dated August 31, 2017 viewed as under:

*"3.316 The Commission has already explained the methodology of Carrying Cost Rate in paras above. Further, the Commission has rectified the error of 8% Surcharge in Tariff Order dtd. 29/09/2015 and the impact has been considered in*

*3.317 Table 92: Impact as approved by the Commission on account of implementation Hon'ble APTEL Judgments (Rs. Cr.)*

3.8.263 It is humbly submitted that though the Hon'ble Commission has rectified the apparent error with respect to the amount of 8% Surcharge during FY 2012-13, it has not rectified the treatment of such surcharge while computing the closing amount of Regulatory Asset.

3.8.264 All financial institutions are adjusting the repayment amount firstly against the interest accrued on the outstanding balance and then if anything out of repayment is left with the principal amount.

Similarly in case of FY 2012-13 and FY 2013-14, 8% surcharge fetched only Rs. 158 Crore and Rs. 280 Crore whereas the carrying cost alone is Rs. 256 Crore and Rs. 300 Crore respectively. Therefore the same ought to be adjusted with the carrying cost computed for the complete year on outstanding balance of Regulatory Assets.

3.8.265 In view of the above submissions, the correct computation of Regulatory Assets is tabulated below:

**Table 3.17ck: Correct computation of Regulatory Assets (Rs. Crore)**

S. No	Particulars	FY 13	FY 14	Reference
1	Opening Balance	2279.0	2844.5	A
2	Additions	534.5	198.8	B
3	8% Surcharge	-237.3	-280.0	C
4	Net (Gap)/ Surplus	297.1	-81.3	D=B+C
5	Rate of Carrying cost	10.54%	10.77%	E
6	Carrying cost	268	317	$F=(A+B/2) \times E$
7	Closing Balance	2844	3080	G=A+D+F
8	RA during the year	2832	3051	H
9	Difference	13	29	I=G-H

3.8.266 The aforesaid amount along with carrying cost is tabulated below:



**Table 3.17cl: Impact on account of correct computation of RA along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 13	FY 14	FY 15	FY 16
1	Opening balance	0.0	13.5	46.8	53.8
2	Additions	12.5	29.1		
3	Closing Balance	12.5	42.6	46.8	53.8
4	Average	6.3	28.0	46.8	53.8
5	Rate of carrying cost	15.03%	15.01%	15.13%	14.80%
6	Carrying cost	0.9	4.2	7.1	8.0
7	Grand Closing Balance	13.5	46.8	53.8	61.8

3.8.267 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the same in the ARR.

**Issue-B16: Wrong adjustment of carrying cost allowed in tariff with revenue gap/surplus during the year:**

3.8.268 The Hon'ble Commission in Tariff Order dated July 23, 2014, allowed carrying cost of Rs. 432.61 Crore in ARR of FY 2014-15 towards funding of carrying cost on regulatory assets recognised till FY 2012-13 and 8% surcharge towards recovery of principal amount of Regulatory Assets. Relevant excerpts are reproduced below:

*"4.166 The Commission has submitted to the Hon'ble APTEL, the proposal for liquidation of Revenue Gap in the matter of I.A. no. 365 of 2013 in Appeal no. 266 of 2013 of the Petitioner. As per the proposal, carrying cost for FY 2014-15 will be considered in the ARR of FY 2014-15. This proposal has also been submitted before Hon'ble Supreme Court of India in Civil Appeal No. 884 of 2010.*

*The Carrying Cost of 11.92% (70%\*10.17%+30%\*16%) on Revenue Gap has been considered based on the Hon'ble APTEL's directions in Appeal No. 142 of 2009 in the ratio of Debt:Equity (70:30) which is subject to final outcome of Civil Appeal No 9003 & 9004 of 2011 before Hon'ble Supreme Court of India.*

*Accordingly, the carrying cost on provisionally approved Revenue Gap upto FY 2012-13 is indicated in the Table as follows:*

*Table 4.58: Carrying Cost on Revenue Gap (Rs. Crore)*

Sl. No	Particulars	Amount	Remarks
1	Opening Gap for FY 2012-13 (Revised)	(2946.61)	Table 5.1
2	Revenue Requirement for FY 2012-13	3966.76	Table 3.69
3	Revenue during FY 2012-13	3325.27	Para 3.52
4	(Gap) / Surplus for FY 2012-13	(641.49)	(3-2)
5	Surcharge for FY 2012-13	158.90	Table 3.70
6	Net (Gap) / Surplus for FY 2012-13	(482.59)	(4+5)
7	Provisional Rate of carrying cost for the year	11.48%	Para 5.25
8	Carrying cost FY 2012-13	(365.97)	$(1*7)+((6*7)/2)$
9	Closing balance of (Gap) / Surplus at the end of the year FY 2012-13	(3795.17)	(1+6+8)
10	Revenue requirement for FY 2014-15	371.12	Table 4.59
11	Provisional Rate of carrying cost for the year	11.92%	2 <sup>nd</sup> MYT order
12	Total Revenue Requirement including carrying cost for FY 2014-15	4147.73	$(10-(9*11))/(1+(8\%/2)*1)$
13	Carrying cost FY 2014-15	(432.61)	(10-12)

- 3.8.269 In Tariff Order dated September 29, 2015, the Hon'ble Commission adopted similar approach and allowed carrying cost of Rs. 271.23 Crore in ARR of FY 2015-16 and 8% Surcharge separately towards recovery of principal amount of Regulatory Assets recognised till FY 2013-14. (Ref: Table 4.61 of the Tariff Order)
- 3.8.270 In Tariff Order dated August 31, 2017 while undertaking truing-up of FY 2014-15 and FY 2015-16, the Hon'ble Commission ignored the fact that Rs. 432.61 Crore and Rs. 271.23 Crore were allowed towards carrying cost on opening Regulatory Assets of FY 2014-15 and FY 2015-16 and adjusted the same against revenue gap/ (Surplus) during FY 2014-15 and FY 2015-16 respectively.
- 3.8.271 By doing so, the Hon'ble Commission has acted contrary to its' own affidavit submitted before the Hon'ble Supreme Court in Writ Petition 105 of 2014 wherein it proposed the recovery of carrying cost through tariff and recovery of principal amount through 8% surcharge.
- 3.8.272 The Hon'ble Commission by diverting the amount meant for carrying cost of Regulatory Assets towards ARR of FY 2014-15 and FY 2015-16 has actually left only 8% surcharge for recovery of both carrying cost and principal amount of Regulatory Assets upto FY 2014-15 and FY 2015-16. Such treatment is directly against the observations of this Hon'ble Tribunal in IA 365 of 2013. Relevant excerpts are reproduced below:

*"16. It is not clear to us from the schedule for recovery of the Regulatory Assets filed by the Commission how the carrying cost of the Regulatory Assets has to be recovered when the revenue generated from 8% surcharge is to be used to set off the principal sum of Regulatory Assets. We expect a proper road map from the*

*Commission indicating clearly the proposed year-wise liquidation of the Regulatory Assets both for the principal and interest thereupon for the approved Regulatory Asset as at the end of FY 2011-12 which could give comfort to the Banks/ Financial Institutions to continue financial support to the Applicants.”*

As evident from the aforesaid, the Hon’ble Commission by considering carrying cost towards meeting revenue gap during FY 2014-15 and FY 2015-16 has brought to situation back to FY 2012-13 and FY 2013-14 during which meagre 8% surcharge was allowed to the Petitioner which was not even enough to meet the carrying cost on Regulatory Assets.

- 3.8.273 It is a settled law that the principles based on which ARR is forecasted cannot be changed at the stage of Truing-up. Same has been upheld by this Hon’ble Tribunal in Judgment dated May 23, 2007 in Appeal 265 of 2006. However the Hon’ble Commission by diverting the amount of carrying cost allowed in ARR of FY 2014-15 and FY 2015-16 towards computation of revenue gap/ surplus for FY 2014-15 and FY 2015-16 has changed the principle at the stage of truing-up.
- 3.8.274 Further the Hon’ble Commission has entirely changed the methodology for computation of Regulatory Assets proposed in the liquidation plan submitted before the Hon’ble Supreme Court.
- 3.8.275 As per the proposed liquidation plan, the Regulatory Assets was required to be computed at applicable carrying cost which shall ensure full recovery of carrying cost incurred during the year and after that 8% surcharge was required to be deducted from the principal amount of Regulatory Assets at the end of Year.
- 3.8.276 By doing so, the Hon’ble Commission has reduced the amount of Regulatory Assets by Rs. 78 Crore, i.e., approved Rs. 2662 Crore in place of Rs. 2740 Crore. Correct amount of Regulatory Assets till FY 2015-16 by adjusting the amount meant for carrying cost against carrying cost based on Order RA numbers during FY 2014-15 and FY 2015-16 as per the liquidation plan proposed before Hon’ble Supreme Court has been computed below:

**Table 3.17cm: Revised RA sought at the end of FY 2015-16 (Rs. Crore)**

S. No	Particulars	FY 2014-15	FY 2015-16
1	Opening Balance	3051.2	3131.0
2	Additions	459.5	-533.0
3	8% Surcharge	-306.1	-332.7
4	Net (Gap)/ Surplus	153.5	-865.6
5	Rate of CC	10.94%	10.96%
6	Carrying cost	358.9	313.9
7	Less: Carrying cost	432.6	271.2

S. No	Particulars	FY 2014-15	FY 2015-16
	allowed in ARR		
8	Closing Balance	3131.0	2308.1
9	Amount of carrying cost		431.9
10	Total Closing balance	3131.0	2740.0
11	RA during the year	3090.6	2662.0
12	Difference	40.4	78.0

3.8.277 By doing so, the Hon'ble Commission has reduced the cumulative amount of Regulatory Assets upto FY 2015-16. The impact on account of incorrect adjustment of Carrying cost during FY 2014-15 and FY 2015-16 has been computed below:

**Table 3.17cn: Total impact along with carrying cost (Rs. Crore)**

S. No	Particulars	FY 15	FY 16
1	Opening balance	0.0	43.5
2	Additions	40.4	78.0
3	Closing Balance	40.4	121.5
4	Average	20.2	82.5
5	Rate of carrying cost	15.13%	14.80%
6	Carrying cost	3.1	12.2
7	Grand Closing Balance	43.5	133.7

3.8.278 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the same in the Tariff Order.

**Issue-B17: Erroneous net-worth computations:**

3.8.279 As regards the computation of net-worth, the Petitioner in its Petition for Truing-up of FY 2014-15, Review of FY 2015-16, Multi-year ARR from FY 2016-17 to FY 2020-21 and Tariff of FY 2016-17 stated as under:

*"3.13.22 The Hon'ble Commission in Tariff Order dated September 29, 2015 considered the means of finance as per the net-worth formulae proposed in Tariff Order dated July 31, 2013.*

*In this regard it is submitted that the Hon'ble Commission misrepresented the submissions of the Petitioner by naming the heading of Table-3.7 in Tariff Order dated September 29, 2015 as "Net worth assessment from FY 2002-03 to FY 2014-15 submitted by the Petitioner".*

*It is respectfully submitted that the Hon'ble Commission did not capture the following:*

*a) Net-worth details submitted from FY 2002-03 to FY 2011-12:*

**Table 3.22e: Correspondences on net-worth from FY 2002-03 to FY 2011-12**

S. No	Date of letter	Subject	Considered or not?
1	17.02.2014 (DERC to Petitioner)	Direction to submit net-worth details of the company	
2	26.02.2014 (Petitioner to DERC)	Net-worth details of the company as per Regulatory Books	Not considered
3	25.03.2014 (DERC to Petitioner)	Direction to submit net-worth details of the company as per formulae in TO dt. 31.07.2013	
4	04.04.2014 (Petitioner to DERC)	Net-worth details of the company as per formulae in TO dt. 31.07.2013	Considered in TO dated September 29, 2015

b) Net-worth details submitted from FY 2012-13 to FY 2014-15:

**Table 3.22f: Correspondences on net-worth details from FY 2012-13 to FY 2014-15**

S. No	Date of letter	Subject	Considered or not?
1	15.06.2015 (DERC to Petitioner)	Email to submit net-worth as per new formulae	
2	22.06.2015 (Petitioner to DERC)	<ul style="list-style-type: none"> <li>Challenged the net-worth formula</li> <li>Request to consider formula as per PFC Report "The Performance of State Power Utilities for the years 2010-11 to 2012-13"</li> <li>Implement ATE Judgments before arriving at any conclusion as the same will drastically change net-worth.</li> </ul>	<ul style="list-style-type: none"> <li>Considered only net-worth from FY 13 to FY 15</li> <li>Did not consider the challenge to net-worth formula.</li> <li>Did not consider the formulae as per PFC Report for determination of net-worth from FY 03 to FY 13.</li> <li>Did not implement ATE Judgments.</li> </ul>

It is submitted that the computation of net-worth based on the audited statements is irrelevant and leads to incorrect results due to the following reasons:

1. Consideration of net-worth based on audited accounts contradictory to Statutory advice dated December 15, 2010:

*The Hon'ble Commission in its Statutory advice dated December 15, 2010 has itself recognised the fact that due to continuous non cost reflective tariffs, the Petitioner is not able to realise the return on equity in accordance with the entitlement as per Regulations and thus had to resort to extensive borrowings resulting in adverse effect on financials of the Petitioner. It is further submitted that the advice of the Hon'ble Commission was based on the audited accounts for FY 2008-09, FY 2009-10 and half yearly accounts of FY 2010-11. However, the Hon'ble Commission in Tariff Order dated September 29, 2015 contradictory to its own statutory advice dated December 15, 2010 considered the funding of capitalisation and working capital by computing net-worth as per Audited Accounts of respective years whereas the Regulatory Assets of Rs. 3051 Crore (as per the Tariff Order dated September 29, 2015) have yet not been amortised till date.*

**2. Inconsistent approach for different expenses:**

*The consideration of net-worth as per audited statements is also inconsistent with the treatment given to other expenses which is as under:*

- a) R&M Expenses and A&G Expenses-FY 05 to FY 07: The Petitioner vide letter dated June 8, 2015 requested the Hon'ble Commission to allow R&M and A&G Expenses from FY 2004-05 to FY 2006-07 as per audited statements pending verification of claims by auditor firm appointed by the Hon'ble Commission. However the Hon'ble Commission in Tariff Order dated September 29, 2015 stated that the final impact shall be considered based on the report of Chartered Accountant firm appointed by the Hon'ble Commission.*
- b) Physical verification of assets: The Petitioner in the Petition for Truing-up for FY 2013-14, Review of FY 2014-15 and ARR and Tariff determination of FY 2015-16 requested the Hon'ble Commission to consider actual capital expenditure and capitalisation based on audited accounts pending non-completion of physical verification of assets for last 9 years. The Hon'ble Commission stated that the final impact shall be considered based on the report from consultant.*
- c) SVRS terminal benefits: The Hon'ble Commission acknowledged that the payment has been made on account of SVRS terminal benefits by the Petitioner. However the Hon'ble Commission did not allow the same pending adjudication of*



*clarificatory application filed before Hon'ble ATE.*

- d) *Implementation of other ATE directions: The Hon'ble Commission stated that the impact shall be allowed after the adjudication of clarificatory application filed before Hon'ble ATE.*

*In case of net-worth, the Hon'ble Commission has followed a different approach in the same tariff order, i.e., September 29, 2015. The Petitioner vide letter dated June 22, 2015 requested the Hon'ble Commission to consider debt-equity ratio after implementation of Hon'ble ATE's directions in various Judgments. However the Hon'ble Commission considered net-worth ratio as per audited statement despite of following a different approach in case of other expenses. Such selective approach leads to incorrect result in terms of net-worth.*

3. *Reversal of means of finance from FY 2002-03 onwards and reopening of previous tariff orders:*

*The Hon'ble Commission has not realized the fact that the Petitioner has not recovered the return on equity which is still invested in the business. The Hon'ble Commission in Tariff Order dated June 26, 2003 while approving means of finance stated as under:*

*"3.10.2... According to the Policy Directions, the Return of 16% is applicable on Equity and Free Reserves invested into the assets. **However, the approval of Commission has been obtained for the free reserves invested towards the funding of the capital investments.**" (Emphasis supplied)*

*Further the Hon'ble Commission in tariff order dated June 9, 2004 has utilized the internal accruals invested in the business for the purpose of capitalisation as under:*

*"2.27.15. Return on Equity*

*The Commission would like to inform that the system of ARR and Tariff determination being followed by the Commission gives due weightage to the efficiency of operations and only prudent expenditure is allowed to be recovered through tariffs. The paying capacity of the DISCOMs is determined after considering the prudently incurred expenses as well as the revenue earned through tariffs....*

*As regards provision of return on opening balance of free reserves or closing balance of free reserves invested in the system, **the Commission in its Order on ARR for FY 2002-03***



*and FY 2003-04 has taken a very rational and balanced view and allowed the return on the average of opening balance at the beginning of the year and the closing balance of free reserves at the end of the year to the extent these free reserves has been considered as means of finance to be invested towards capital investment.” (Emphasis supplied)*

*As evident from above, the Hon’ble Commission considered the return on equity earned as a means of finance for the purpose of funding capitalisation in Tariff Order dated June 9, 2004. The Hon’ble Commission continued with this approach till Tariff Order dated July 23, 2014. The Petitioner vide letter dated February 24, 2014 provided the details of net-worth of the company from FY 2002-03 to FY 2012-13 by considering return on equity as surplus funds as per the approach adopted by the Hon’ble Commission in the past.*

*However, in the Tariff Order dated September 29, 2015 (refer to Para No. 3.137 to 3.140), the Hon’ble Commission reopened the means of finance pertaining to all previous years and revised the means of finance based on net-worth from FY 2002-03 onwards contrary to its’ own statutory advice dated December 15, 2010.*

**4. Determination of net-worth without implementation of directions given by Hon’ble ATE:**

*It is submitted that the Hon’ble Commission has till date not implemented various directions of Hon’ble ATE despite of submission on affidavit in Appeal 14 of 2012 which has resulted in continuous denial of legitimate expenses and thus lower income. This policy of continuous denial of implementation of Hon’ble ATE’s directions has led to adverse effect on net-worth of the Petitioner for no fault on the part of the Petitioner and is not account of any business as usual situation. In fact the Hon’ble Commission vide affidavit dated January 31, 2014 filed before the Hon’ble Supreme Court in IA No. 7 of 2014 (Civil Appeal No. 980 of 2010) itself admitted that the impact on account of non-implementation of various directions of Hon’ble ATE for BSES DISCOMs is Rs. 4500 Crore.*

*It is further submitted that the aforesaid does not include the impact on account the Judgment pronounced by the Hon’ble Tribunal in Appeal 62 of 2012 and Appeal 178 of 2012 on*

November 28, 2014 and March 2, 2015 respectively, i.e., Judgments issued after submission of affidavit of the Hon'ble Commission. It is further submitted that there is no stay on the directions given by the Hon'ble ATE in various Judgments.

It is submitted that the Petitioner vide letter dated June 22, 2015 requested the Hon'ble Commission to consider debt-equity ratio after implementation of Hon'ble ATE's directions in various Judgments. Further, the Petitioner also submitted the comparison of debt-equity ratio as per the audited accounts of the respective years from FY 2012-13 to FY 2014-15 with the debt-equity ratio after implementation of Hon'ble ATE's directions in various Judgments. However, the Hon'ble Commission neither responded to the contentions of the Petitioner nor assigned any reason for consideration of net-worth as per audited accounts without implementing the directions of Hon'ble ATE. In fact the Hon'ble Commission has not even mentioned that the net-worth will change after implementation of Hon'ble ATE directions as if the same is not required to be implemented and the issue of net-worth has attained the finality.

5. Net-worth formulae also utilised for working capital contrary to directions of Hon'ble ATE in Appeal 52 of 2008:

It is further submitted that the Hon'ble Commission has also applied the aforesaid formula for the computation of means of finance for working capital which is contrary to the findings of this Hon'ble ATE in Judgment dated July 31, 2011 (Appeal 52 of 2008) which states as under:

"43. Regulation 5.8 provides formula for calculating the Regulated Rate Base for a particular year wherein **working capital is clearly one of the elements so much so that any change in the normative working capital has to be included.**

44. Regulation 5.9 sets out the formula for computing the Return on capital employed by multiplying the weighted average cost of capital with the Regulated Rate Base. As mentioned above, **Regulation 5.10 stipulates formula to compute the weighted cost of capital which precedes on a clear belief that the debt equity ratio of 70% and 30% has to be accounted for.**

45. The Learned Counsel for the Appellant, while refuting the submission of the State Commission that the approach adopted by the State Commission was on the basis of the normal industry practice by referring to the tariff orders of the

*4 State Commissions. The Appellant has cited Tariff orders of Karnataka State Commission, Himachal Pradesh State Commission, Jharkhand State Commission and the Gujarat State Commission. It is noticed from the regulations of these State Commissions have different Regulations for the interest on Working Capital and have treated Working Capital separate from the Regulated Rate Base and do not have the concept of Return on Capital Employed as provided in the Delhi Commission's Regulations. Under these circumstances, the Delhi Commission is directed to re-compute the Weighted Average Cost of Capital for each year of the Control Period along with the carrying cost and apply on the respective years Regulated Rate Base for allowance of Return on Capital Employed according to its Regulations. This issue is answered in favour of the Appellant." (Emphasis supplied)*

*As evident from above, the Hon'ble ATE directed the Hon'ble Commission to allow the funding of working capital in debt-equity ratio of 70:30 since the Tariff Regulations applicable in Delhi have the concept of RRB which includes working capital unlike the practice of separately allowing interest on working capital adopted by the Regulatory Commissions in other states. However the Hon'ble Commission instead of implementing the directions of Hon'ble ATE has chosen to allow the funding of working capital based on the formulae of net-worth as proposed in Tariff Order dated July 31, 2013 which is contrary to the directions of the Hon'ble ATE.*

*Therefore, the present net-worth as per the financial books of the Petitioner does not represent the true picture and thus cannot be utilized for computation of actual equity available for the purpose of funding capitalisation and Working Capital. Accordingly the Petitioner has considered the funding of capitalisation and working capital in line with practice adopted by the Hon'ble Commission prior to Tariff Order dated September 29, 2015 and as per the directions of Hon'ble ATE given in various Judgments."*

3.8.280 As regards the aforesaid submissions, the Hon'ble Commission in Tariff Order dated August 31, 2017 has not given any finding.

3.8.281 The Petitioner would like to further submit that the Hon'ble Commission in Tariff Order dated September 29, 2015 has not provided the details of means of finance and has applied the debt and equity balance by comparing the net-worth with 30% of Regulated Rate Base. In fact in Tariff Order dated

August 31, 2017, the Hon'ble Commission unlike previous tariff orders has not provided any schedule for debt and equity allowed for the funding of capitalisation while revising the same based on net-worth formulae. Now the Petitioner has made the debt and equity schedule based upon the computations given by the Hon'ble Commission in Tariff Order dated September 29, 2015 and August 31, 2017:

**Table 3.17co: Equity schedule based on average equity numbers considered in Table-3.36 and Table-3.50 of Tariff Order dated September 29, 2015 and Table 171 of Tariff Order dated August 31, 2017 (Rs. Crore)**

S. No	Financial Year	Opening Equity	Additions	Closing Equity	Average Equity Considered
1	FY 2002-03	116.0	-101.9	14.1	65.0
2	FY 2003-04	14.1	-28.1	-14.1	0.0
3	FY 2004-05	-14.1	28.1	14.1	0.0
4	FY 2005-06	14.1	-19.9	-5.8	4.1
5	FY 2006-07	-5.8	112.4	106.6	50.4
6	FY 2007-08	106.6	-121.4	-14.8	45.9
7	FY 2008-09	-14.8	122.0	107.2	46.2
8	FY 2009-10	107.2	10.4	117.7	112.4
9	FY 2010-11	117.7	219.8	337.5	227.6
10	FY 2011-12	337.5	173.5	510.9	424.2
11	FY 2012-13	510.9	-234.7	276.2	393.6
12	FY 2013-14	276.2	239.4	515.6	395.9
13	FY 2014-15	515.6	-214.1	301.5	408.6
14	FY 2015-16	301.5	296.5	598.0	449.8

**Table 3.17cp: Debt schedule based on average debt numbers considered in Table-3.36 and Table-3.50 of Tariff Order dated September 29, 2015 and Table 171 of Tariff Order dated August 31, 2017 (Rs. Crore)**

S. No	Financial Year	Opening Debt	Additions	Closing Debt	Average Debt Considered
1	FY 2002-03	174.0	25.0	199.0	186.5
2	FY 2003-04	199.0	22.8	221.8	210.4
3	FY 2004-05	221.8	226.6	448.4	335.1
4	FY 2005-06	448.4	231.5	679.9	564.2
5	FY 2006-07	679.9	193.6	873.4	776.7
6	FY 2007-08	873.4	-124.7	748.8	811.1
7	FY 2008-09	811.1	498.5	1309.6	1060.4
8	FY 2009-10	1060.4	215.2	1275.6	1168.0
9	FY 2010-11	1168.0	-84.5	1083.5	1125.7
10	FY 2011-12	1125.7	-271.9	853.8	989.8
11	FY 2012-13	989.8	239.8	1229.6	1109.7

S. No	Financial Year	Opening Debt	Additions	Closing Debt	Average Debt Considered
12	FY 2013-14	1109.7	127.5	1237.2	1173.5
13	FY 2014-15	1237.2	243.6	1480.9	1359.0
14	FY 2015-16	1480.9	146.0	1626.9	1553.9

Based on the above, the funding of capitalisation is tabulated below:

**Table 3.17cq: Means of finance for Policy Direction Period (Rs. Crore)**

S. No	Particulars	FY 03	FY 04	FY 05	FY 06	FY 07
1	Capex	56	88	414	299	209
2	Closing sundry creditors				104	85
3	Financing Required	52	88	414	403	295
4	<b>Means of finance</b>					
a	Consumer contribution	8	14	34	17	21
b	APDRP Grants		16			
c	APDRP Loans		16			
d	Depreciation	8	9	9	38	43
e	Internal accruals	-102	-28	28	-20	112
f	Loan	25	23	227	231	194
g	Sundry creditors			104	85	
5	<b>Gap left in funding</b>	<b>113</b>	<b>38</b>	<b>12</b>	<b>51</b>	<b>-76</b>

**Table 3.17cr: Means of finance from FY 2007-08 to FY 2013-14 (Rs. Crore)**

S. No	Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14
A	Capitalisation	133	156	98	103	50	23	140
B	Working Capital	42	6	-4	-10	-1	0	54
C	<b>Total</b>	<b>175</b>	<b>163</b>	<b>94</b>	<b>94</b>	<b>50</b>	<b>23</b>	<b>194</b>
D	Means of Finance							
1	Consumer contribution	2	10	23	62	11	9	27
2	Equity	-121	122	10	220	173	-235	239
3	Debt	-125	499	215	-84	-272	240	128
4	<b>Total</b>	<b>-244</b>	<b>631</b>	<b>248</b>	<b>197</b>	<b>-88</b>	<b>15</b>	<b>394</b>
E	<b>Gap left in funding</b>	<b>419</b>	<b>-468</b>	<b>-154</b>	<b>-104</b>	<b>138</b>	<b>9</b>	<b>-200</b>

As evident from the aforesaid tables, means of finance is not matching with capitalisation for even a single year for the period from FY 2002-03 to FY 2013-14.

3.8.282 Accordingly the Petitioner has considered the impact on account of the same by considering debt-equity ratio of 70:30 as per the methodology adopted by the Hon'ble Commission in past Tariff Orders. The impact on account of the same is already included in Table-3.17u of the Petition.

3.8.283 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the same in the Tariff Order for FY 2018-19.

**Issue-18: Correction in opening balance of consumer contribution in Opening****RRB:**

- 3.8.284 The Hon'ble Commission vide e-mail dated March 24, 2015 directed the Petitioner to submit the consumer contribution data duly audited in a specified format. The Petitioner vide letter dated May 18, 2015 submitted the data duly certified by Auditor with respect to consumer contribution. However the Hon'ble Commission did not assign any reason for not considering the same in Tariff Order dated September 29, 2015. Since the Hon'ble Commission allowed the funding of capital expenditure instead of capitalisation during Policy Direction Period, i.e., FY 2002-03 to FY 2006-07, the Petitioner has considered the actual consumer contribution and grants received till FY 2006-07.
- 3.8.285 Further the Hon'ble Commission has shifted from RoCE approach to ROE approach during the MYT Regime, i.e, from March 1, 2008 onwards. The actual consumer contribution and grants capitalised till FY 2006-07 is Rs. 8.71 Crore and Rs. 16.22 Crore respectively. The Petitioner has accordingly considered the same for the purpose of computation of depreciation and RoCE.
- 3.8.286 The impact on account of the same is already included in Table-3.17u of the Petition.
- 3.8.287 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the same in the Tariff Order for FY 2018-19.

**Issue-B19: Advance Against Depreciation upto FY 2015-16:**

- 3.8.288 Clause-5.18 of DERC MYT Regulations, 2007 and Clause-5.21 of DERC MYT Regulations, 2011 provides for the provision of Advance against depreciation (AAD).
- 3.8.289 Accordingly, the Petitioner in its Petition filed for Truing-up upto FY 2013-14, Review of FY 2015-16 and ARR for FY 15-16 has submitted the claim for AAD and provided the details of actual loan repaid from FY 2002-03 to FY 2013-14 in Form F3b forming part of the said ARR Petition.
- 3.8.290 The Hon'ble Commission in the Tariff Order dated September 29, 2015 had revised the GFA for the period upto FY 2013-14. Consequently, all capex related items, i.e., RoCE, Depreciation and Income-tax were also recomputed. However, the Hon'ble Commission has not allowed revised AAD, moreover had disallowed the entire provisionally allowed amount on account of AAD in the previous Tariff Orders (dated July 31, 2013 and July 23, 2014) and stated as below:

*"As per MYT Regulations, for computation of AAD, the Petitioner is required to submit the actual debt repayment schedule for the*



*purpose of determination of AAD during FY 2007-08 to FY 2013-14. Accordingly, the Petitioner is directed to submit the revised claim on account of AAD for the said period. Final view will be taken upon the receipt of requisite data by the Petitioner."*

3.8.291 Accordingly, the Petitioner in its Petition for Truing-up of FY 2014-15, Review of FY 2015-16 and Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff for FY 2016-17 submitted the revised claim on account of AAD along with details of actual loan repayment upto FY 2014-15. Further, the claim for FY 2015-16 was submitted in the Petition for True-up of FY 2015-16. However, the Hon'ble Commission has not given any finding in the Tariff Order dated August 31, 2017.

3.8.292 It is humbly submitted that prudence check of all loans availed during FY 2007-08 to FY 2013-14 was also conducted by the Hon'ble Commission wherein the Petitioner has submitted the audited information with respect to all loans availed during the said period. The details of loan are also being submitted by the Petitioner in the respective ARR Formats forming part of the True-up/ARR Petition.

3.8.293 The computation of AAD for FY 2007-08 to FY 2015-16 is tabulated as below:

**Table 3.17cs: AAD for the period FY 2007-08 to FY 2015-16 (Rs. Crore)**

Particulars	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15	FY 16
1/10 of the Opening loan (A)	72.1	90.2	100.6	109.0	112.7	109.7	88.4	94.1	105.3
Debt Repayment for capex loans (B)	21.0	100.5	138.6	246.7	162.3	166.7	218.3	194.9	201.5
Minimum of A&B	21.0	90.2	100.6	109.0	112.7	109.7	88.4	94.1	105.3
Depreciation as per ARR routed for repayment of loans	53.4	62.7	70.3	75.9	80.3	82.0	84.4	90.3	97.6
<b>Excess of Min (A,B) over Depreciation</b>	<b>-32.4</b>	<b>27.6</b>	<b>30.3</b>	<b>33.1</b>	<b>32.5</b>	<b>27.6</b>	<b>4.0</b>	<b>3.8</b>	<b>7.7</b>
Cumulative Repayment ( C )	395.4	496.0	634.6	881.2	1043.5	1210.2	1428.5	1623.4	1824.9
Cumulative Depreciation incl. AAD (D)	249.8	312.4	382.7	458.6	538.9	620.9	705.3	795.6	893.2
<b>Excess of (C) over (D)</b>	<b>145.7</b>	<b>183.6</b>	<b>251.9</b>	<b>422.6</b>	<b>504.7</b>	<b>589.3</b>	<b>723.2</b>	<b>827.8</b>	<b>931.7</b>
<b>AAD</b>	<b>0.0</b>	<b>27.6</b>	<b>30.3</b>	<b>33.1</b>	<b>32.5</b>	<b>27.6</b>	<b>4.0</b>	<b>3.8</b>	<b>7.7</b>

3.8.294 The financial impact on account of AAD has been considered in Table-3.17u of this Chapter.

3.8.295 Without pre-judice, the Petitioner requests the Hon'ble Commission to allow the AAD for the period FY 2007-08 to FY 2015-16 as computed by the Petitioner, in the Tariff Order for FY 2018-19.



3.8.296 Based on the above submissions, the total impact on account of previous claims is tabulated below:

**Table 3.17ct: Total impact claimed on account of previous claims (Rs. Crore)**

S. No	Particulars	Principal	Carrying Cost	Total
1	Disallowance of PP Cost due to MOD	101.3	59.0	160.3
2	Over lapping banking transactions	3.8	0.7	4.4
3	Non-Tariff Income-Write back of misc. provisions	214.5	260.2	474.7
4	Interest on funding of carrying cost		26.1	26.1
5	De-capitalisation of assets	26.3	27.7	54.1
6	Cost disallowed on account of power from Anta, Auraiya and Dadri gas	128.6	47.6	176.2
7	Cost disallowed on account of excessive trading at UI above contingency limit	18.7	5.7	24.4
8	Normative rebate	224.5	73.7	298.2
9	Disallowance of R&M Expenses	16.3	19.5	35.8
10	Double accounting of employee expenses	100.5	32.5	133.0
11	Cost disallowed on account of regulation of Power	244.0	95.6	339.6
12	Bank charges/ syndication fees	132.8	79.1	211.9
13	Income from other business-SLMC	91.5	78.9	170.4
14	Financing cost of LPSC-FY 14 to FY 16	26.2	6.6	32.8
15	Wrong adjustment of 8% surcharge against revenue gap/ surplus during FY 2012-13 and FY 2013-14	41.6	20.2	61.8
16	Wrong adjustment of carrying cost allowed in tariff	64.9	8.6	73.5
17	Erroneous net-worth computations	Included in capex related claims in Table 3.17v above		
18	Correction in opening balance of consumer contribution in Opening RRB			
19	Advance Against Depreciation upto FY 2015-16			
20	<b>Total</b>	<b>1435.4</b>	<b>841.8</b>	<b>2277.2</b>

**C. Claims on account of arithmetical/computational errors and omissions in the previous Tariff Order, sought for reconsideration by the Hon'ble Commission.**

3.8.297 There are certain arithmetical/computational errors, apparent errors and omissions in the Tariff Order dated 31.08.2017 which requires reconsideration by the Hon'ble Commission.

3.8.298 On November 2017, the Petitioner has filed a Petition under section 94 and section 62(4) of the Electricity Act 2003 read with clauses 57, 58 and 59 of the DERC (Conduct of Business) Regulations 2001, seeking review / revision/ clarification of the Tariff Order dated 31.08.2017 on such issues. The cumulative impact of the issues pertaining to the previous period along with carrying cost upto FY 2015-16 is is tabulated below:

**Table 3.17cu: Total impact of claims on account of errors and/or omissions in previous Tariff Order (Rs. Crore)**

S. No	Particulars	Principal	Carrying Cost	Total
1	Error in computation of AT&C loss and Revenue for FY 08-09	102.9	180.3	283.2
2	Error in Amount Billed for computation of AT&C loss for FY 14-15 & FY 15-16	3.2	0.5	3.7
3	Omission of the amount of Depreciation corresponding to Consumer contribution for capital works during FY 12-16	26.8	11.6	38.4
4	Erroneous inclusion of Pole rental income in Non Tariff Income for FY 2015-16	0.8	0.1	0.9
5	Arithmetical error in summation of O&M Expenses for FY 2008-09 and FY 2009-10	125.1	180.9	306.0
6	Error in including UI interest as part of NTI during FY 2009-10 to FY 2013-14	63.1	67.7	130.8
7	Erroneous inclusion of refund of Rs. 30.56 Cr. received from the Income Tax Department as Income Tax for FY 2013-14	34.8	14.6	49.4
8	Error in consideration of Rebate from DTL as NTI during FY 2013-14	9.6	4.0	13.6
9	Error in computation of Normative Rebate on Power Purchase Cost	4.3	4.3	8.7
10	<b>Total</b>	<b>370.6</b>	<b>464.1</b>	<b>834.7</b>

3.8.299 The Petitioner requests the Hon'ble Commission to consider the submissions made by the Petitioner in the said Petition dated 20.11.2017 and allow the impact on account of same along with carrying cost in the Tariff Order for FY 2018-19.

### 3.9 Operation and Maintenance (O&M) Expenses

3.9.1 As discussed in Para 3.1 above, since FY 2016-17 is already completed and the Hon'ble Commission has not set any targets for O&M expenses, the Petitioner is claiming actual O&M expenses as per the Audited Accounts of FY 2016-17 as below.

**Table 3.18: O&M Expenses for FY 2016-17 (Rs. Crore)**

S. No	Particulars	Submission	Remarks/Reference
A	Employee Expenses	270.3	Note 35 of the Audited Accounts
B	A&G Expenses*	171.5	Note 38 of the Audited Accounts
C	R&M Expenses	105.5	Note 38 of the Audited Accounts
D	<b>Total O&amp;M Expenses</b>	<b>547.3</b>	<b>A+B+C</b>

\* Excluding provisions

3.9.2 The Petitioner requests the Hon'ble Commission to allow the actual O&M expenses during FY 2016-17 as submitted in the above table.

### 3.10 Other Miscellaneous Expenses

3.10.1 In this section the Petitioner has discussed the item-wise claims on account of statutory levies/Taxes and miscellaneous expenses which are uncontrollable in nature and not covered in the above mentioned O&M expenses.

a) Other Borrowing Costs:

3.10.2 The Petitioner has had to take huge loans to finance its Regulatory Assets. For the purpose of availing such loans, the banks in the ordinary course of its business have charged various bank charges. The petitioner has claimed such costs as part of its other Borrowing Cost on the basis of actual amounts paid to the bank on such loans. It also ought to be noted that the Petitioner is not claiming this other borrowing cost as a part of its capitalization. The Petitioner is seeking recovery of such charges as part of miscellaneous charges and not as a part of capitalization. Moreover, these costs are an automatic and necessary corollary to any funding from any bank. Hence, if any funding is accepted by the Hon'ble Commission, the actual cost of such funding also ought to be allowed. Further the same being uncontrollable in nature and directly linked to the increase in Regulatory Assets ought to be allowed in the ARR of the Petitioner.

**Table 3.19a: Other Borrowing Cost (in Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Reference
A	Other Borrowing cost	6.97	Note 36 of the Audited Accounts
B	Total	6.97	

b) Incremental Service tax paid:

3.10.3 The Service Tax rates have been increased from time to time as below:

Particulars	Service tax rate (%)
Upto FY 11-12	10.30
July-12	12.36
June-15	14.00
November-15	14.50
April-16	14.50
June-16	15.00

Since the expenses allowed by the Hon'ble Commission for FY 12-13 to FY 15-16 were based on the expenses for FY 2011-12, hence the impact of increase in cost on account of variation in service tax rate under Opex has not been

allowed by the Hon'ble Commission. Further, the service tax was applicable on few services in FY 11-12 which has been extended to all services except specifically covered in negative list.

3.10.4 It is submitted that any addition/deletion or new enactment of statutory levy is totally uncontrollable in the hands of the Petitioner and is required to abide by the same. The said amendments in the Finance Act 2012 have impacted the Petitioner in Two ways i) due to change in Service Tax rate and ii) introduction of Reverse Charge Mechanism & Negative list.

3.10.5 Accordingly, the incremental Service Tax paid by the Petitioner during FY 12-13 to FY 2015-16 and claimed as part of true-up requirement for FY 2016-17 is tabulated as below:

**Table 3.19b: Incremental Service Tax paid (in Rs. Crore)**

S. No.	Particulars	FY 12	FY 13	FY 14	FY 15	FY 16
1	Service Tax included in base year	6.9				
2	Inflation Factor approved by DERC		8%	8%	8%	8%
3	Amount approved y-o-y		7.4	8.0	8.7	9.4
4	Efficiency Factor approved by DERC		2%	3%	4%	4%
5	Approved amount after eff. Factor		7.3	7.8	8.3	9.0
6	Service Tax actually paid		10.5	12.3	15.9	21.2
7	<b>Incremental Service Tax paid</b>		<b>3.2</b>	<b>4.5</b>	<b>7.6</b>	<b>12.2</b>
8	<b>Total Impact</b>			<b>27.5</b>		

c) Arrears paid on account of 7<sup>th</sup> Pay Commission revision:

3.10.6 The Petitioner has booked total expense of Rs. 62.25 Crores in the financial accounts for H1 of FY 2017-18 on account of revision in salaries of erstwhile DVB Employees, out of which Rs. 49.66 Crores pertains to the arrears upto 31<sup>st</sup> March 2017. The Petitioner has already paid Rs. 30 Crores upto September 2017. It is pertinent to mention that the said amount of Rs. 49.66 Crores pertains to the impact upto FY 2016-17 and is not included in the O&M expenses claimed in Table 3.18 above.

3.10.7 Since the expenses are uncontrollable in the hands of the Petitioner and are already paid to the employees, the Hon'ble Commission is requested to allow the amount of arrears paid for period upto FY 2016-17 in the current true-up exercise.

d) Impact of Revision in Minimum Wages:

3.10.8 GoNCTD vide Notification No. F. Addl.LC/Lab/MW/2016/4859 dated 3<sup>rd</sup> March 2017 has notified the revised minimum wages effective from date of notification.

3.10.9 Accordingly, the Petitioner has paid the Rs. 2.2 Crore on account increase in

cost due to revision in minimum wages for one month of FY 2016-17 i.e. March'17.

**Table 3.19: Other uncontrollable costs/ Miscellaneous expenses submitted by the Petitioner (Rs. Crore)**

S. No	Particulars	Amount (Rs. Cr.)	Reference
1	Other Borrowing cost	7.0	Table 3.19a
2	Incremental Service Tax Paid	27.5	Table 3.19b
3	Arrears paid on account of 7 <sup>th</sup> Pay Commission revision	49.7	Para-3.10.6 & 3.10.7
4	Impact of Revision in Minimum Wages	2.2	Para-3.10.8 & 3.10.9
5	<b>Total</b>	<b>86.3</b>	<b>Sum(1 to 4)</b>

3.10.10 The Petitioner requests the Hon'ble Commission to allow the aforesaid expenses while Truing up for FY 2016-17.

### 3.11 Non-Tariff Income

3.11.1 The items which have been added apart from the income shown as per Audited Accounts are as under:

#### Interest on Consumer Security Deposit:

3.11.2 As the Hon'ble has considered Consumer Security Deposit for funding of Revenue Gap, therefore the Petitioner has considered the rate of Carrying cost for computing the interest on Consumer Security Deposit. Hence the difference of normative interest on CSD and that booked in the Audited Accounts (26%) has been added in NTI as under:

**Table 3.20a: Interest on CSD (Rs. Crore)**

S. No	Particulars	Reference	FY 2016-17
1	Opening Balance of CSD	A	444.6
2	Closing Balance of CSD	B	457.2
3	Average Balance	$C=(A+B)/2$	450.9
4	Interest rate	D	14.64%
5	Interest on CSD	$E=C \times D$	66.0
6	Interest booked in Audited Accounts	F	25.8
7	<b>Net Interest to be considered</b>	<b>G=E-F</b>	<b>40.2</b>

#### Difference on account of Service Line Development (SLD) Charges:

3.11.3 The Hon'ble Commission in Tariff Order dated September 29, 2015 ruled as under:

*"3.355 The Commission has observed from the audited financial statements (Note 8) that the service line charge received from the consumers amounting to Rs.23.76 Crore is remained unadjusted and kept in deposit account. These service line charges are collected from the consumers and by deferring and not treating as nontariff income will inflate the ARR by the same extent which tantamount to collection of the same from the consumers again through tariffs."*

3.11.4 The Petitioner has challenged the aforesaid issue before Hon'ble ATE in Appeal 290 of 2015. Without pre-judice to the contentions in the Appeal, the Petitioner has added the difference between the SLD Charges received during FY 2016-17 that appearing in the Other Income in the Audited Accounts for the purpose of computation of Non-Tariff Income as under:

**Table 3.20b: Difference on account of SLD (Rs. Crore)**

S. No	Particulars	Amount (Rs. Cr.)	Reference
1	Received during FY 2016-17	29.0	Note 21 of the Audited Accounts
2	SLD appearing in Other Income	21.4	
3	<b>Difference considered</b>	<b>7.6</b>	

3.11.5 Accordingly the Petitioner has added Rs. 7.6 Crore during FY 2016-17 for the purpose of computation of Non-Tariff Income.

3.11.6 The explanation for each of the item not to be considered as Non Tariff Income is as under:

Late Payment Surcharge:

3.11.7 As regards LPSC, it is submitted that the Petitioner levied LPSC @ 1.5% per month on flat basis till FY 2012-13. The Hon'ble Commission was therefore allowing only financing cost of LPSC to the Petitioner by computing the principal amount (LPSC divided by 18% (12 x 1.5%)) and allowing carrying cost on the principal amount. The difference between the amount of LPSC and the interest on principal amount was passed on the consumers by way of NTI.

3.11.8 Based on the representation of Foundation of Rubber & Polymer Manufacturers, the Hon'ble Commission vide letter dated December 13, 2012 communicated that LPSC should be charged proportional to the number of days of delay in receiving payment from the consumers by the Petitioner. The Hon'ble Commission in Tariff Order dated September 29, 2015 again directed the Petitioner to charge LPSC proportionate to the number of days of delay in receiving the payment from the consumers of the DISCOMs.

3.11.9 The Petitioner in this Petition requests the Hon'ble Commission to allow the entire LPSC instead of financing cost of LPSC during FY 2016-17 as the

Petitioner charged LPSC proportionate to the number of days of delay and not on flat basis. The methodology of charging LPSC proportionate to the number of days of delay leads to recovery of only financing cost of LPSC for the delay in payment and not on flat basis. However the Hon'ble Commission without referring to its' direction for change in charging of LPSC continued with the earlier methodology which was utilised for computation of financing of LPSC till FY 2012-13. Such treatment has actually resulted in allowance of financing cost of LPSC at much lower rate.

3.11.10 It is further submitted that the concept of financing cost of LPSC was introduced by the Hon'ble Commission in Tariff Order dated August 26, 2011 as LPSC was considered as a part of revenue realisation for the purpose of computation of AT&C Loss as per Clause-4.7 (c) of DERC Tariff Regulations, 2007. As per DERC Tariff Regulations, 2011, the methodology of computation of revenue realisation for the purpose of computation of AT&C Loss has been changed and LPSC is no longer being included as a part of revenue realisation for computation of AT&C Loss from FY 2012-13 onwards. Since the methodology for computation of AT&C Loss has been changed, the Petitioner ought to be allowed entire LPSC instead of financing cost of LPSC.

3.11.11 It is further submitted that concept of financing cost of LPSC is based on the principle that the Petitioner will fund the amount delayed through loans whereas, it is practically not possible to arrange for the funding of such delayed payment as the Petitioner does not know in advance as to which consumer will pay the bill on deadline and which consumers will not pay the bill on deadline. The process of raising loans for funding any expenditure is time taking process and therefore, in case of any default on part of consumers to pay electricity bills in time, the Petitioner has to face the following penalties:

- d. Penalty on account of under-achievement of AT&C Loss: In case of any under-achievement of AT&C Loss, the Hon'ble Commission levies penalty on the Petitioner irrespective of the fact that the default in collection efficiency is on account of consumers.
- e. Penalty in repayment of Loans: In present scenario, the Petitioner is not operating in business as usual situation. Apart from normal capex loan and working capital loan, the Petitioner is required to fund huge amount of regulatory assets and the revenue gap during the year on account of variation between the estimated ARR and actual ARR. In such a situation any default in payment of billed amount put financial constraints on the ability of the Petitioner to efficiently discharge its debt obligations. As a result the Petitioner



has to face penalty on account of delay in repayment of loans which is not being passed in the ARR.

- f. Penalty by Generators: Generators levy penalty of 1.5% per month in case of non-payment of dues within time.

3.11.12 The Hon'ble Commission's such treatment tantamount to discrimination between Gencos, Transcos and DISCOMs which is depicted in the table below:

S. No	Particulars	Delhi Gencos and Transcos	Delhi DISCOMs
1	Before FY 2013-14	<ul style="list-style-type: none"> <li>LPSC @ 1.5% per month;</li> <li>LPSC collected allowed to Gencos and Transcos irrespective of actual cost of financing delay in payment;</li> <li>Therefore LPSC not considered as Non-Tariff Income.</li> </ul>	<ul style="list-style-type: none"> <li>LPSC @ 1.5% per month;</li> <li>Only financing cost of delayed payment by computing principal amount, i.e., LPSC Collected/ 18% allowed to DISCOMs;</li> <li>Difference between LPSC collected and financing cost of delayed payment considered as NTI.</li> </ul>
2	From FY 2013-14	<ul style="list-style-type: none"> <li>Same treatment continued.</li> </ul>	<ul style="list-style-type: none"> <li>LPSC @ 1.5% proportional to number of days of delay;</li> <li>Same formulae for computing principal amount despite of change in treatment;</li> </ul>

3.11.13 The Hon'ble Commission neither allows the amount nor financing cost on account of these penalties. These penalties are entirely borne by the Petitioner. However the penalty paid by the consumers on account of the delayed payment is not being allowed to the Petitioner and only financing cost on such delayed payment is being allowed.

3.11.14 As per the aforesaid submissions, the Petitioner requests the Hon'ble Commission to allow entire LPSC during FY 2016-17 to be retained by the Petitioner as the same merely meets the financing cost of delay in payment.

Rebate on Power Purchase Cost and Transmission Charges:

3.11.15 Since the actual rebate on power purchase and transmission charges has been deducted for the purpose of calculation of net power purchase cost, same ought to be deducted from Non-Tariff Income. Accordingly the Petitioner has deducted rebate on power purchase and transmission charges from Non-Tariff Income in order to avoid double accounting.

Write-back of Miscellaneous Provisions:

3.11.16 The Hon'ble Commission in Tariff Order dated August 31, 2017 did not

consider the write-back of miscellaneous provisions and stated as under:

*“3.542 The A&G expenses for the base year FY 2011-12 have been benchmarked for the purpose of MYT period FY 2012-13 to FY 2015-16 on the basis of A&G Expenses indicated in the Audited Financial Statement without considering whether the amount has been actually spent or provisioned. Therefore, the Commission is of the view that the provisions written back are to be included in the Non Tariff Income.*

3.11.17 In this regard it is submitted that the amount of Rs. 3.3 crores appearing as Excess provisions written back in Note -33 of the Audited Accounts is an accounting entry reversing the amount of excess Provisions (shown as “Provisions” in the Audited Accounts) created for Retirement of fixed Assets in previous years and was not forming part of A&G expenses considered by the Hon’ble Commission during previous financial years. Hence, the amount of Rs. 3.3 Crores ought not to be considered as part of Non-Tariff Income for FY 2016-17.

Short term gain:

3.11.18 The Hon’ble Commission in Tariff Order dated August 31, 2017 has ruled as under:-

*“3.544 The Petitioner has submitted that Short Term gain is on account of interest received on fixed deposits maintained by the Petitioner as margins kept with the funding agency for loans availed. Therefore, the Commission is of the view that interest on these fixed deposits should be allowed to be reduced from the Non-Tariff Income ..... ”*

3.11.19 Accordingly, the Petitioner requests the Hon’ble Commission to allow the Petitioner to retain the income of Rs. 1.5 Crores on account of interest received on fixed deposits during FY 2016-17 and reduce the same from the Non Tariff Income.

Transfer from consumer contribution and capital works:

3.11.20 The Hon’ble Commission in Tariff Order dated August 31, 2017 has allowed transfer from consumer contribution for capital works to be reduced from NTI for FY 2014-15 and FY 2015-16 on the ground that the consumer contribution is not considered for calculation of depreciation and RoCE and the Petitioner is making book adjustments in compliance of accounting standards and has no impact on the cash flows. Therefore, amount transferred from Consumer contribution and capital works are allowed to be reduced from Non-Tariff Income. (Para 3.548 of the Tariff Order)

3.11.21 Accordingly, the Petitioner requests the Hon’ble Commission to reduce the amount of Rs. 7.3 Crores from the Non-Tariff Income during FY 2016-17.

Income on account of bad debts recovered:

3.11.22 The Hon'ble Commission in Tariff Order dated August 31, 2017 has ruled as under:

*"3.552 The Petitioner has submitted that any amount recovered as bad debts is an energy income which is required to be included in the amount collected during the year as the same is received against the amount billed in the previous years. The amount billed and collected in previous years has already been considered for the purpose of AT&C loss calculation during respective years. It is observed that the amount recovered from the bad debts written off by the Petitioner is part of total collection for the relevant year has also been indicated under the head 'other income' in the audited financial statement of FY 2014-15 and FY 2015-16. Therefore, the Income on account of bad debts recovered are reduced from Non Tariff Income."*

3.11.23 Accordingly, the Petitioner requests the Hon'ble Commission to not consider Rs. 2.5 Crores of income recovered on account of bad debts as Non Tariff Income during FY 2016-17.

Incentive towards Street Light:

3.11.24 The Hon'ble Commission in Tariff Order dated August 31, 2017 has stated that the incentive earned on account of street light maintenance shall be allowed to be retained by the Petitioner.

3.11.25 Accordingly, the Petitioner requests the Hon'ble Commission to allow the Petitioner to retain the amount of Rs. 0.4 Crores as incentive towards the maintenance of Street Light. It is further submitted that the total amount of maintenance charges under the head "Other Income" as appearing in Note - 33 of the Audited Accounts is inclusive of the incentive amount of Rs. 0.4 Crores. Therefore, the amount of Rs. 0.4 Crores ought to be reduced from the Non Tariff income during FY 2016-17.

Sale of scrap:

3.11.26 The Hon'ble Commission in the Tariff Order dated August 31, 2017 did not allow the Income from sale of scrap to be retained by the Petitioner during FY 2014-15 and FY 2015-16 on the ground that the submissions of the Petitioner were contrary to the Accounting Standards as as per AS 10 only gains or losses arising on disposal of fixed assets are generally recognised in the profit and loss statement and not the whole sale proceeds.

3.11.27 In accordance with the aforesaid submissions, the Petitioner requests the Hon'ble Commission to allow the income of Rs. 4.4 Crores from sale of scrap to be retained by the Petitioner and deduct the amount from the Non tariff Income for FY 2016-17.

Commission on Electricity Duty:

- 3.11.28 The Petitioner, as an agent on behalf of Municipal Corporation of Delhi (MCD), collects and pays to the MCD the Electricity Duty. For undertaking this activity, there is incidence of use of assets and facilities of the licensed business towards collection of the Electricity Duty. As such this collection activity is a separate business and optimally utilizes the assets of the Petitioner. Section-51 of the 2003 Act, as well as, Delhi Electricity Regulatory Commission (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) Regulations, 2005 permits the Petitioner to engage in any other business for optimal utilization of its assets.
- 3.11.29 It is submitted that MCD pays the commission to the Petitioner for collecting Electricity Duty on its behalf. This commission paid by MCD is purely Other Business within Section-51 of the 2003 Act, as well as, Delhi Electricity Regulatory Commission (Treatment of Income from Other Business of Transmission Licensee and Distribution Licensee) Regulations, 2005 and accordingly the same would apply to the aforesaid amount earned by the Petitioner as the Commission paid by MCD. For undertaking the activity of collection of Electricity Duty, the Petitioner has expended certain expenses towards incentivizing the existing manpower, engaging additional and external collection agencies which are included in the actual employee expenses.
- 3.11.30 Further the Petitioner has to perform in-house operations also for which the Petitioner is required to incur additional O&M Expenses. Some of these in-house activities involve maintenance of records regarding Electricity Duty (Amount of Electricity Billed, Collected, Outstanding, Paid to GoNCTD etc.), cash-handling activities, interaction with GoNCTD, etc. which involves cost. The Petitioner incurs security and conveyance expenses towards transfer of money. Additionally, the Petitioner has also engaged various collection agencies for which the Petitioner has to pay service charges for such engagement. All these expenses are not being allowed by Hon'ble Commission since O&M Expenses are allowed on a normative basis. It is further submitted that the commission on collection of Electricity Duty is being provided as compensation in lieu of the Petitioner's efforts in collecting and accounting and other services rendered by the Petitioner to GoNCTD. It is submitted that if GoNCTD were to perform such similar activity, it would have involved costs. The Petitioner has reduced the efforts on behalf of GoNCTD, required for collection of Electricity Duty in terms of manpower and other Expenses. It is submitted that the income earned as commission on collection of Electricity Duty ought to be utilized to defray the additional expenses incurred by the Petitioner while undertaking such

activities.

- 3.11.31 The Petitioner in its Petition for True-up of FY 2014-15, Review of FY 2015-16 and Multi-Year ARR from FY 2016-17 to FY 2020-21 and Tariff of FY 2016-17, had submitted that it has to incur additional O&M expenses and other in-house activities involving maintenance of records, cash handling activities, etc., which involve costs. Since these expenses incurred are not being separately allowed by the Hon'ble Commission, the entire income earned through this activity ought not to be reduced from the ARR by treating it as non-tariff income. However, the Hon'ble Commission in the Order (refer to Para No. 3.562) has treated the entire income earned on the aforesaid activity as part of non-tariff income and reduced the ARR of the Petitioner in contravention of its very own 2005 Regulations.
- 3.11.32 The only reason that the Hon'ble Commission has given is that the collection of electricity duty is not a separate function and the same is collected with the electricity bills. It is submitted that simply because the electricity duty is collected along with the electricity bills, that does not mean that the activity of collecting, managing and accounting for the electricity duty, do not attract the incidence of any expenses. For example, if in future, the Petitioner were to engage in another business i.e., to collect water supply bills or telephone bills or gas utility bills, it cannot be said that because the Petitioner collects these amounts along with its electricity bills, these other businesses are distribution functions of the Petitioner or no separate expenses are required for carrying out these other businesses.
- 3.11.33 The collection of electricity duty by the Petitioner is not a licensed activity. The responsibility for collection of electricity duty does not fall upon the licensee either under Section 12 of EA, 2003, nor under the license granted to the Petitioner by the Hon'ble Commission. It is an activity carried out by the Petitioner as a part of the legacy inherited by it from the erstwhile DVB. Even the erstwhile DVB carried out such functions, not as a part of its function of distribution of electricity, but under a statutory mandate of Section 3 of the Delhi Municipal Corporation (Assessment and Collection of Tax on the Consumption, sale or supply of electricity) Bye laws 1962 ("Bye Laws"). Hence, the activity of collection of electricity duty has nothing whatsoever to do with the functions of a distribution licensee under EA, 2003. Since such function is carried out using the assets of the distribution business, such function is clearly attributable to an 'other business' under Section 51 of EA, 2003.
- 3.11.34 The income / commission which is earned by the Petitioner has no connection whatsoever to the ARR of the Petitioner or to the licensed business. As such, this income / commission can never be categorised as non-tariff income. This is particularly so when Regulation 4.7(c) of the MYT

Regulations, 2011 clearly provides that the collection of electricity duty will not be taken into account in computing the Collection Efficiency. If the revenue realisation from the collection of electricity duty does not add to the revenue collection for the purpose of 'Collection Efficiency', the income / commission on such collection earned by the Petitioner cannot form a part of the ARR as non-tariff income.

3.11.35 Therefore the Income from commission received on account of collection of Electricity Duty ought to be deducted from Non-Tariff Income.

3.11.36 Based on the above discussion, the Non-Tariff Income during FY 2016-17 is tabulated as under:

**Table 3.20: Non-Tariff Income submitted for FY 2016-17 (Rs. Crore)**

S. No	Particulars	Amount	Remarks
A	Other Operating Revenue	61.3	Note 32 of Audited Accounts
B	Other Income	28.6	Note 33 of Audited Accounts
I	<b>Total Income as per Accounts</b>	<b>89.9</b>	<b>(A+B)</b>
C	Add: Interest on CSD	40.2	Table 3.20a
D	Add: Difference in SLD	7.6	Table 3.20b
II	<b>Total Other Income</b>	<b>137.7</b>	<b>(I+C+D)</b>
E	Less: Income from other business		(a+b)
a	<i>Pole Rental Income</i>	<i>1.1</i>	
III	<b>Net Income to be considered</b>	<b>136.6</b>	<b>(II-E)</b>
A	Less: LPSC	19.2	Note 32 of Audited Accounts
B	Less: Rebate on Power Purchase and Transmission Charges	-	Note 32 of Audited Accounts
C	Less: Write-back of misc. provisions	3.3	Note 33 of Audited Accounts
D	Less: Short term gain	1.5	Note 33 of Audited Accounts
E	Less: Transfer from Consumer contribution for capital works	7.3	Note 32 of Audited Accounts
F	Less: Bad debts recovered	2.5	Note 33 of Audited Accounts
G	Less: Incentive towards Street Light	0.4	Note 33 of Audited Accounts
H	Less: Sale of scrap	4.4	Note 33 of Audited Accounts
I	Less: Commission on collection of Electricity Duty	6.1	Note 32 of Audited Accounts
IV	<b>Net Non-Tariff Income</b>	<b>91.9</b>	<b>(III-sum A to I)</b>

3.11.37 The Petitioner requests the Hon'ble Commission to allow the NTI during FY 2016-17 as submitted in the above table.

**3.12 Income from other business**

- 3.12.1 The Hon'ble Commission in its Order dated 06.10.2006 in Petition No. 4 of 2005 filed by NDPL has stated that the Discom's LT Poles can be used for laying the cable TV network and such usage can be done by way of an agreement between the cable operator and the Licensee for generating revenue. The relevant extract of the Order is reiterated as below:

*"29. The Commission is therefore, of the opinion that the poles other than the Central Verge and the HT Poles can be used for laying the cable TV network and such usage can be done by way of an agreement between the cable operator and the Licensee. **Any revenue generated thereto shall be subject to the Regulations made by the Commission on the Treatment of Income from Other Business.**"*  
*Emphasis laid*

- 3.12.2 The Petitioner had earned total income of Rs. 1.09 Crore during FY 2016-17 on account of rent from the cable operators for using BYPL LT poles for laying their cables/set up. It is further clarified that Proper agreements have been executed between BYPL and the operator for such usage in terms of the above Order of the Hon'ble Commission.
- 3.12.3 Accordingly, the Petitioner has proposed to share the other income during FY 2016-17 as below:

**Table 3.21: Other Business Income for FY 2016-17 (Rs. Crore)**

S. No	Particulars	Total Income	Petitioner's Share (2/3rd)	Consumer's Share(1/3rd)
A	Pole Rental Income	1.09	0.73	0.36
<b>B</b>	<b>Total</b>	<b>1.09</b>	<b>0.73</b>	<b>0.36</b>

- 3.12.4 The income of Rs. 5.3 Crores recovered from Open Access Charges during FY 2016-17 has been considered for offsetting the revenue (gap)/ surplus for the year.

**3.13 Capital Expenditure and Capitalisation**

- 3.13.1 The Petitioner has considered the Closing GFA for FY 2015-16 as submitted in Table 3.17d above as opening GFA for FY 2016-17.
- 3.13.2 Actual capitalization and de-capitalisation as per the Audited Accounts for FY 2016-17 has been considered to derive the closing balance of GFA as under:

**Table 3.22: Gross Fixed Assets for FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref.
A	Opening GFA	2,892.1	Table 3.17d



S. No	Particulars	FY 2016-17	Remarks/ Ref.
B	Capitalisation during the year	242.2	Note 3 of the Audited Accounts
C	De-capitalisation	24.7	Note 3 of the Audited Accounts
D	Closing GFA	3,109.6	A+B-C
E	Average GFA	3,000.9	(A+D)/2

#### Funding of Capitalisation

3.13.3 During FY 2016-17, the Petitioner has capitalised Rs. 242.2 Crores which includes Rs. 18 Crores on account of consumer contribution capitalised during the year. The Petitioner has sought financing of Capitalisation (net of de-capitalisation and consumer contribution) through debt and equity in the ratio of 30:70 as below:

**Table 3.23: Financing of Capitalisation for FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref.
A	Total Capitalisation	242.2	Table 3.22
B	De-capitalisation	24.7	Table 3.22
C	Consumer Contribution	18.0	Note 20 of the Audited Accounts
D	<b>Balance Capitalisation</b>	<b>199.5</b>	<b>A-B-C</b>
E	Debt	139.6	70% of D
F	Equity	59.8	30% of D

#### Consumer contribution:

3.13.4 The average consumer contribution for FY 2016-17 is tabulated below:

**Table 3.24: Consumer contribution for FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref.
A	Opening Balance	201.2	Table 3.17i
B	Additions during the year	18.0	Table 3.23
C	Closing Balance	219.2	A+B
D	Average Consumer Contribution	210.2	(A+C)/2

#### Details of Grants:

3.13.5 The average Grants for FY 2016-17 is tabulated below:

**Table 3.25: Grants (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref.
A	Opening Balance	16.2	

S. No	Particulars	FY 2016-17	Remarks/ Ref.
B	Additions during the year	-	
C	Closing Balance	16.2	A+B
D	Average Grants	16.2	(A+C)/2

### 3.14 Depreciation

- 3.14.1 For the purpose of computing depreciation for True-up of FY 16-17, the Petitioner has followed the same methodology as considered by the Hon'ble Commission in the past i.e. the average rate of Depreciation based on the Audited Accounts of the Petitioner has been applied on the average GFA net of consumer contribution and grants.
- 3.14.2 The average rate of Depreciation for FY 2016-17 based on the Audited Accounts of the Petitioner is tabulated below:

**Table 3.26: Computation of avg. rate of Depreciation for FY 2016-17 (Rs. Crore)**

S. No	Particulars	Actual	Remarks/ Ref.
A	Opening GFA as per audited accounts	2863.0	Note 3 of Audited Accounts
B	Closing GFA as per audited accounts	3080.5	
C	Average of GFA	2971.8	(A+B)/2
D	Depreciation as per Audited Accounts	117.6	P&L account
E	<b>Average depreciation rate</b>	<b>3.96%</b>	<b>(D/C)*100</b>

- 3.14.3 Accordingly, the Petitioner has calculated the allowable depreciation after excluding consumer contribution and Grants from the Gross Fixed Assets as under:

**Table 3.27: Depreciation for FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref.
A	Average GFA	3,000.9	Table 3.22
B	Average Consumer Contribution and Grants	226.4	Table 3.24 & Table 3.25
C	Average assets net of consumer contribution & Grants	2,774.5	A-B
D	Average rate of depreciation	3.96%	Table 3.26
E	<b>Depreciation</b>	<b>109.8</b>	<b>C*D</b>

- 3.14.4 The cumulative depreciation on fixed assets at the end of FY 2016-17 is tabulated below:

**Table 3.28: Cumulative Depreciation on fixed assets upto FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref.
A	Opening balance of cumulative depreciation	893.2	Table 3.17g
B	Additions during the year	109.8	Table 3.27
C	Closing balance of cumulative depreciation	1003.0	A+B

3.14.5 Accordingly the depreciation has been utilised for repayment of loan as under:

**Table 3.29: Utilisation of depreciation (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref
A	Depreciation	109.8	Table 3.27
B	Depreciation utilised for debt repayment	109.8	

### 3.15 Advance against depreciation

3.15.1 The Petitioner requests the Hon'ble Commission to allow AAD for FY 2016-17 as tabulated below:

**Table 3.30: Advance Against Depreciation (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref
1	1/10 of the Opening loan (A)	118.0	Table 3.31b
2	Debt Repayment for capex loans (B)	112.3	Form 3b
3	<b>Minimum of A&amp;B</b>	<b>112.3</b>	
4	Depreciation as per ARR routed for repayment of loans	109.8	Table 3.29
5	<b>Excess of Min (A,B) over Depreciation</b>	<b>2.4</b>	
6	Cumulative Repayment ( C)	1937.1	
7	Cumulative Depreciation incl. AAD (D)	1003.0	Table 3.28
8	<b>Excess of (C) over (D)</b>	<b>934.1</b>	
9	<b>AAD</b>	<b>2.4</b>	<b>Min(5 and 8)</b>

### 3.16 Working Capital

3.16.1 The Petitioner has computed the Working Capital Requirement for FY 2016-17 based on the actual Power Purchase cost and revenue available towards ARR as submitted for Truing Up of FY 2016-17. Accordingly, the Working Capital Calculation for FY 2016-17 is tabulated below:

**Table 3.31: Working Capital Requirement (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref
A	Annual Revenues from Tariff & Charges	4164.5	Table 3.38
A1	Receivables equivalent to two months average	694.1	A/6
B	Power Purchase Expenses	3352.6	Table 3.17
B1	Less: 1/12th of power purchase expenses	279.4	B/12
C	Working Capital	414.7	A1-B1
D	Opening Working Capital	489.6	Table 3.17m
E	<b>Change in Working Capital</b>	<b>-74.9</b>	<b>D-E</b>

3.16.2 The Working capital as shown above has been considered for calculation of Regulated Rate Base for FY 2016-17.

### 3.17 Debt and Equity

3.17.1 The Petitioner has considered one-tenth of the outstanding balance of loan as repayment during the year. The same has been deducted from the loan balance for calculation of average debt during the year. The average debt and equity for FY 2016-17 is tabulated below:

**Table-3.32: Average Debt and Equity for FY 2016-17 (Rs. Crore)**

S. No	Particulars	Debt	Equity	Remarks/ Ref
A	Opening	1179.9	948.0	Table-3.17n & 3.17o
B	Additions during the year			
i	Capex	139.6	59.8	
ii	Working capital	-74.9		
C	Less: Repayment	118.0		
D	Closing	1126.7	1007.8	A+B-C
E	Average	1153.3	977.9	Average(A,D)

3.17.2 The Petitioner has considered the aforesaid debt and equity balance for the purpose of computation of RoCE.

### 3.18 Regulated Rate Base (RRB)

3.18.1 Based on the above submissions, the Regulated Rate Base (RRB) for FY 2016-17 has been computed as below:

**Table-3.33: Regulated Rate Base for FY 16-17(Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref
A	RRB Opening	2171.4	Table 3.17p

S. No	Particulars	FY 2016-17	Remarks/ Ref
B	$\Delta$ AB (Change in RRB)	102.7	C-D+E-F
C	Investments Capitalized	217.5	Table 3.23
D	Depreciation (incl AAD)	112.3	Table 3.27 & Table 3.30
E	Add: Depreciation on De-capitalised Assets	15.4	Table 3.30
F	Consumer Contribution	18.0	Table 3.24
G	Change in WC	-74.9	Table 3.31
H	RRB Closing	2199.2	A+B+G
I	<b>RRB (i)</b>	<b>2147.9</b>	<b>A+B/2+G</b>

### 3.19 Weighted Average Cost of Capital (WACC)

3.19.1 The Petitioner has considered the actual rate of interest of capex loans during 2016-17 i.e. 13.84% and RoE at 16% for computation of WACC as under:

**Table 3.34: Weighted Average Cost of Capital (WACC) (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref
A	Average Debt	1153	Table 3.32
B	Average Equity	978	Table 3.32
C	Total	2131	A+B
D	Cost of Debt	13.84%	Form F2c
E	Return on Equity	16%	
F	Weighted Average Cost of Capital (WACC)	14.83%	$((A \times D) + (B \times E)) / C \times 100$

### 3.20 Return on Capital Employed (RoCE)

3.20.1 Based on the aforesaid submissions, the RoCE for FY 2016-17 is computed as below:

**Table 3.35: RoCE for FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Ref
A	Weighted Average Cost of Capital (WACC)	14.83%	Table 3.34
B	RRB (i)	2148	Table 3.33
C	<b>RoCE</b>	<b>319</b>	<b>A*B</b>

3.20.2 The Petitioner requests the Hon'ble Commission to allow RoCE based on the above computations.

**3.21 Additional return due to AT&C overachievement during FY 2016-17**

3.21.1 For FY 2016-17 the petitioner has claimed the overachievement of 2.75% (Para 3.3.6, Table-3.6). Accordingly, the overachievement has been computed as below:

**Table 3.35 a: Overachievement incentive sought for FY 2016-17 (Rs. Cr.)**

S. No	Particulars	FY 2016-17	Remarks/ Ref
A	RRB (average)	2,147.9	Table 3.34
B	Equity (Average)	977.9	Table 3.33
C	% of Equity	45.5%	B/A
D	Additional Return on equity (%)	2.75%	Table 3.6
E	Overachievement	26.9	A*C*D

**3.22 Income-Tax:**

3.22.1 The electricity business is supposed to operate on cost plus approach. In such case the income and expenses should be equal and income-tax ought to be allowed by grossing up ROE considering same as normative profit. If computation of actual income tax is to be done, a conjoint reading of the above Regulations of the Respondent Commission in the light of the ratio laid down by this Hon'ble Tribunal would clearly establish that :-

- i. The Distribution Business must be treated as if in a water tight compartment;
- ii. The ROE is not only the income of the Distribution Business;
- iii. A 16% return on equity has been assured to the distribution business and must be given to the entity meaning thereby all other taxes payable by the distribution business computed on a normative basis must be allowed as a pass through.

3.22.2 Therefore the Income-tax ought to be allowed on ROE approach and not on comparative approach between ROE and actual Income-Tax basis.

3.22.3 Also the Hon'ble ATE in its Judgment dated April 04, 2007 (Appeal No. 251 of 2006) has dealt with the issue of income-tax as under:

*"The consumers in the licensee's area must be kept in a water tight compartment from the risks of other business of the licensee and the Income Tax payable thereon. Under no circumstance, consumers of the licensee should be made to bear the Income Tax accrued in other businesses of the licensee. Income Tax assessment has to be made on standalone basis for the licensed business so that consumers are fully insulated and protected from the Income Tax payable from other businesses."*

- 3.22.4 Further the Hon'ble ATE in its Judgment dated November 28, 2013 (Appeal No. 104, 105 and 106 of 2012) has ruled as under:

*"56. It is also to be noted that for difference in book depreciation and tax depreciation, the tax laws provide for creating Deferred Tax Liability (DTL) which gets amortised with time when tax depreciation becomes lower than book depreciation. However, in regulated business DTL is not considered as it is not the current tax liability. Thus, in case the benefit of accelerated tax depreciation for one year in regulated business may result in lower overall tax on overall book profit (due to MAT) and may seem to subsidise other businesses. However, in subsequent years the overall tax liability may be more than tax on overall book profit, which would seem to give subsidy from other businesses to regulated business. In both these situations, the methodology of standalone tax computation and allowance would give correct picture.*

...

*58. The Tribunal in Appeal No. 251 of 2006 has laid down the ratio that the income tax assessment of the licensee must be done on standalone basis. In Appeal No. 173 of 2011 the Tribunal has provided the methodology for assessing the income tax liability of the licensee. The State Commission did not follow these directions and got carried away with the observations that the utility must not gain or loose on account of income tax made in the context of grossing up of income tax. It simply allocated the actual tax paid by the Appellant, for the company as a whole, in proportion to their respective book profit."*

- 3.22.5 It is submitted that both the above Judgments squarely apply in the case of the Petitioner. The Hon'ble Commission deals with the Regulatory accounts of the Petitioner. Therefore the Hon'ble Commission may compute the tax as per the regulatory accounts and adjust the Income tax (to be allowed in the Annual Revenue Requirement) on the return earned as per the Regulatory accounts. Ideally the Petitioner's ARR ought to have been so determined that the Income generated from Retail business is equal to all expenses, Return on Equity and the tax payable. It is submitted that such a situation doesn't exist due to absence of cost reflective tariff and various disallowances by the Hon'ble Commission.
- 3.22.6 Further it is submitted that the Petitioner is currently availing the benefit of Tax Holiday under section 80IA of the Income Tax Act, 1961 and the past un-absorbed losses. However once the Period of Tax Holiday is over and the past un-absorbed losses are adjusted the Petitioner will be required to pay higher rate/ amount which will increase the tax liability of the Petitioner. In case the same approach is adopted, the Income-tax allowed will be allowed on actual basis in the current Financial Year as the actual Income-tax paid is lesser than the entitlement as per ROE Approach.



Therefore the Hon'ble Commission ought to be determine the Income-Tax on ROE Approach consistently.

- 3.22.7 In accordance with above submissions, the Petitioner is claiming the Income-Tax during FY 2016-17 on ROE approach as a part of Truing-up requirement during FY 2016-17 which is tabulated below:

**Table-3.36: Income-Tax during FY 2016-17 (Rs. Crore)**

S. No	Particulars	FY 2016-17	Remarks/ Reference
A	Average Equity	977.9	Table 3.32
B	Rate of Return on Equity	16%	
C	Return on Equity	156.5	A*B
D	Income Tax Rate	20.96%	
E	<b>Income Tax</b>	<b>41.5</b>	<b>(C/(1-D))-C</b>

- 3.22.8 The Petitioner requests the Hon'ble Commission to allow Income-tax based on the aforesaid submissions.

### 3.23 Aggregate Revenue Requirement approved in Truing-up of FY 2016-17

- 3.23.1 Based on the above submissions, the Annual Revenue Requirement for FY 2016-17 sought for True-up is tabulated below:

**Table-3.37: Aggregate Revenue Requirement for FY 2016-17 (Rs. Crore)**

S. No	Particulars	Submission	Remarks/ Reference
A	Purchase of power including Transmission and SLDC Charges	3352.6	Table 3.17
B	O&M Expenses	547.3	Table 3.18
C	Other Expenses/ Statutory levies	86.3	Table 3.19
D	Depreciation	109.8	Table 3.27
E	Advance Against Depreciation (AAD)	2.4	Table 3.30
F	Return on Capital Employed (RoCE)	318.6	Table 3.35
G	Additional return on account of overachievement of AT&C loss	26.9	Table 3.35a
H	Income Tax	41.5	Table 3.36
I	<b>Sub-total</b>	<b>4485.4</b>	<b>Sum (A to H)</b>
J	Less: Non-Tariff Income	91.9	Table 3.20
K	Less: Income from other business	0.4	Table 3.21
L	Less: Income from Open Access	5.3	Para 3.12.4
M	<b>Aggregate Revenue Requirement</b>	<b>4387.8</b>	<b>I-(J+K+L)</b>

**3.24 Revenue available towards ARR**

3.24.1 The revenue available towards ARR is tabulated as under:

**Table-3.38: Revenue details (Rs. Crore)**

S. No	Particulars	Submission	Remarks/ Reference
A	Total Revenue Collected	4990.7	Net of LPSC
B	Less: E-Tax and RA recovery	826.3	
C	<b>Revenue available towards ARR</b>	<b>4164.5</b>	<b>A-B-C</b>

**3.25 Revenue (Gap)/ Surplus**

3.25.1. The revenue gap during FY 2016-17 is tabulated as under:

**Table-3.39: Revenue (Gap) for FY 2016-17 (Rs. Crore)**

S. No	Particulars	Submission	Reference
A	ARR for FY 2016-17	4387.8	Table 3.37
B	Revenue available towards ARR	4164.5	Table 3.38
C	<b>Revenue (Gap)/ Surplus</b>	<b>(223.3)</b>	<b>B-A</b>

3.25.2. The Petitioner requests the Hon'ble Commission to true up for FY 2016-17 as submitted above.



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